

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Terrell McSweeney

In the Matter of)	
)	
Keystone Orthopaedic Specialists, LLC,)	
a professional limited liability company, and)	
)	Docket No. C-
Orthopaedic Associates of Reading, Ltd.,)	
a professional corporation.)	
)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Keystone Orthopaedic Specialists, LLC, hereafter referred to as “Respondent Keystone,” and Orthopaedic Associates of Reading, Ltd., hereafter referred to as “Respondent Orthopaedic Associates,” and Respondent Keystone and Respondent Orthopaedic Associates having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent Keystone and Respondent Orthopaedic Associates with violating Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent Keystone and Respondent Orthopaedic Associates, their attorneys and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent Keystone and Respondent Orthopaedic Associates of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Keystone and Respondent Orthopaedic Associates 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 Respondent Keystone and Respondent Orthopaedic Associates have violated the said Acts, 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 filed by interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Keystone is a for-profit professional limited liability company organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at 1270 Broadcasting Road, Reading, Pennsylvania 19610.
2. Respondent Orthopaedic Associates is a for-profit professional corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at 301 South Seventh Avenue, Suite 3220, West Reading, Pennsylvania 19611.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent Keystone and Respondent Orthopaedic Associates, 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 Keystone” means Keystone Orthopaedic Specialists, LLC, its directors, officers, employees, agents, and representatives; its successors and assigns; its joint ventures, subsidiaries, divisions (including, without limitation, Advanced Orthopaedics of Reading, Arthritis & Joint Replacement Center of Reading, P.C., Berkshire Orthopedic Associates, Inc., Bone & Joint Care Center, Commonwealth Orthopaedic Associates, Inc., and Reading Neck and Spine Center, P.C.), groups and affiliates controlled by Respondent Keystone, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.
- B. “Respondent Orthopaedic Associates” means Orthopaedic Associates of Reading, Ltd., its directors, officers, employees, agents, and representatives; its successors and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Respondent Orthopaedic Associates, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

- C. "Commission" means the Federal Trade Commission.
- D. "Centers for Medicare and Medicaid Services" or "CMS" means the federal agency that administers the Medicare, Medicaid and Child Health Insurance programs. As used in this Order, CMS does not include non-governmental Payors participating in CMS programs.
- E. "Medical Group Practice" means a bona fide, integrated firm in which Physicians practice medicine together as partners, shareholders, owners, members, employees, or in which only one Physician practices medicine.
- F. "Orthopedist" means a doctor of allopathic medicine or a doctor of osteopathic medicine who performs surgery and provides services to treat injuries and diseases of the musculoskeletal system.
- G. "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."
- H. "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.
- I. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities and governments.
- J. "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.").
- K. "Preexisting Contract" means a contract that was in effect on the date that a Payor that is a party to such contract receives the notice sent by Respondent Keystone or Respondent Orthopaedic Associates, pursuant to Paragraph VI.B of the Order, of such Payor's right to terminate such contract.
- L. "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.
- M. "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.
- N. “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.
- O. “Qualified Arrangement” means a Qualified Clinically-Integrated Joint Arrangement or a Qualified Risk-Sharing Joint Arrangement.

II.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order is issued:

- A. Respondent Keystone shall not, without receiving prior approval from the Commission, acquire, directly or indirectly, through subsidiaries or otherwise, any ownership interest, or any other interest, in whole or in part, in Respondent Orthopaedic Associates; and
- B. Respondent Orthopaedic Associates shall not, without receiving prior approval from the Commission, acquire, directly or indirectly, through subsidiaries or otherwise, any ownership interest, or any other interest, in whole or in part, in Respondent Keystone.

III.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date the Order is issued:

- A. Each Respondent shall not, without receiving prior approval from the Commission:
 - 1. Acquire, directly or indirectly, through subsidiaries or otherwise, in whole or in part, any Orthopedist's practice located in Berks County, Pennsylvania; or
 - 2. Enter into any employment, membership, or other agreement of affiliation with any Orthopedist who during the prior year provided orthopedic services through a Medical Group Practice or as an employee of a hospital located in Berks County, Pennsylvania; and
- B. The purpose of Paragraph III of this Order is to ensure competition among Orthopedists to enter into contracts with Payors for the provision of orthopedic services in Berks County, Pennsylvania and to remedy the lessening of competition alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that each Respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of orthopedic 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 Orthopedists:

1. To negotiate on behalf of any Orthopedists with any Payor;
 2. To refuse to deal or threaten to refuse to deal with any Payor;
 3. Regarding any term, condition, or requirement upon which any Orthopedist 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 through such Respondent.
- B. Exchanging or facilitating in any manner the exchange or transfer of information among Orthopedists concerning any Orthopedist's willingness to deal with a Payor, or the terms or conditions, including price terms, on which the Orthopedist is willing to deal;
- C. Attempting to engage in any action prohibited by Paragraph IV.A or IV.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 IV.A through IV.C above.

Provided, however, that nothing in this Paragraph IV shall prohibit any agreement involving or conduct by a Respondent:

- (i.) that solely involves Physicians in the Respondent's Medical Group Practice; or
- (ii.) subject to the provisions of Paragraph V below, that is reasonably necessary to form, Participate in, or take any action in furtherance of a Qualified Arrangement.

V.

IT IS FURTHER ORDERED that:

- A. For five (5) years from the date this Order is issued, pursuant to each Qualified Arrangement in which such Respondent is a Participant, such Respondent shall notify 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 Qualified Arrangement relating to price or other terms or conditions of dealing with any Payor; or
 2. Contacting a Payor, pursuant to a Qualified 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 Qualified Arrangement.

Provided, however, that any Notification required by this Paragraph V is not required for negotiations or agreements with subsequent Payors pursuant to any Qualified Arrangement for which such Notification was given; and

B. Each Respondent shall include the following information in the Notification:

1. For each Physician Participant, his or her name, address, telephone number, medical specialty, Medical Group Practice, if applicable, and the name of each hospital where he or she has privileges;
2. A description of the Qualified 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 Qualified Arrangement;
4. An explanation of the relationship of any agreement of prices or contract terms related to price to furthering the integration and achieving the efficiencies of the Qualified Arrangement;
5. A description of any procedures proposed to be implemented to limit possible anticompetitive effects resulting from the Qualified 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 Berks County, Pennsylvania, including, but not limited to, the notifying Respondent's market share, any Physician's or any Medical Group Practice's market share of Physician services in Berks County, Pennsylvania.

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 the Order may not have occurred. In addition, the absence of notice to a Respondent that the Qualified Arrangement has been rejected shall not be construed as a determination by the Commission, or its staff, that the Qualified Arrangement has been approved.

Provided further that, receipt by the Commission from a Respondent of any Notification of a Qualified Arrangement is not to be construed as a determination by the Commission that any such Qualified Arrangement does or does not violate the Order or any law enforced by the Commission.

VI.

IT IS FURTHER ORDERED that each Respondent shall:

- A. Within thirty (30) days after the date this Order issues, send by first-class mail, with return receipt or delivery confirmation, or by facsimile or electronic mail with return confirmation, a copy of this Order, the Complaint and the Analysis of the Proposed Order to Aid Public Comment to each:
 1. Orthopedist who Participates, or has Participated, in Respondent since January 1, 2011; and
 2. Officer, director, or manager of Respondent (including, but not limited to, the manager of each Keystone division) and any employee of Respondent with responsibilities related to negotiating or contracting with a Payor.
- B. Within thirty (30) days after the date this Order issues send by first-class mail, with return receipt or delivery confirmation, or by facsimile or electronic mail with return confirmation a copy of this Order, the Complaint, the Analysis of the Proposed Order to Aid Public Comment and the notice specified in Appendix A to the Order to the chief executive officer of each Payor that Respondent has a record of having been in contact with since January 1, 2010.
- C. 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: (1) receipt by Respondent of a written request from a Payor to terminate such contract, or (2) the earliest termination or renewal date (including any automatic renewal date) of such contract.

Provided, however, that a Preexisting Contract may extend beyond any such termination or renewal date for a period of no longer than one year from the date on which the Order issues, if prior to such termination or renewal date: (i) the Payor submits to Respondent a written request to extend such contract to a specific date no later than one year after this Order is issued; and (ii) Respondent has determined not to exercise any right to terminate under its Preexisting Contract.

Provided further that any Payor making such request to extend a contract retains the right, pursuant to part 1 of this Paragraph VI.C, to terminate the Preexisting Contract at any time.

Provided further that for the purposes of Paragraphs VI.B and VI.C, Payor does not include CMS.

- D. Within (10) days of receiving notification from a Payor to terminate, pursuant to Paragraph VI.C of the Order, notify in writing by first-class mail, with return receipt or delivery confirmation, or by facsimile or electronic mail with return confirmation each Orthopedist Participating in Respondent of the date such contract is to be terminated.
- E. For three (3) years after the date on which this Order is issued, send by first-class mail, with return receipt or delivery confirmation, or by facsimile or electronic mail with return confirmation a copy of this order and the Complaint to each:
 - 1. Orthopedist who begins Participating in Respondent for the provision of orthopedic services, and who did not previously receive a copy of the Order and the Complaint, within thirty (30) days of the date that such Participation begins;
 - 2. Payor who contracts with Respondent for the provision of Physician services, who did not previously receive a copy of the Order and the Complaint, within thirty (30) days of the date such Payor enters into such contract; and
 - 3. Person who becomes an officer, director, or manager of Respondent (including, but not limited to, the manager of each Keystone division) and any employee of Respondent with responsibilities related to negotiating or contracting with a Payor , and who did not previously receive a copy of the Order and the Complaint, within thirty (30) days of the date that he or she assumes such status with Respondent.

VII.

IT IS FURTHER ORDERED that each Respondent shall file a verified written report within sixty days after the date this Order is issued, annually thereafter for ten (10) years on the anniversary of the date this Order is issued, and at such other times as the Commission may by written notice require. Each report shall include, among other information that may be necessary:

- A. A detailed description of the manner and form in which Respondent has complied and is complying with the Order, including, as applicable but not limited to, seeking the prior approvals required by Paragraphs II and III of this Order;
- B. The name of each Orthopedist who did not Participate in the practice of orthopedics in Berks County and who began Participating in Respondent during the one (1) year period preceding the date for filing such report;
- C. The name, address, and telephone number of each Payor with which each Respondent has had any contact during the one (1) year period preceding the date for filing such report;
- D. The identity of each Payor sent a copy of the letter attached as Exhibit A, the response of each Payor to that letter and the status of each contract to be terminated pursuant to that letter; and

- E. A copy of each verification of the distributions required by Paragraph VI.A, B, and E of this Order.

VIII.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent;
- B. Any proposed acquisition, merger or consolidation of Respondent; or
- C. Any other change in Respondent, including but not limited to assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent, each Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date the Order is issued.

By the Commission.

SEAL:
ISSUED:

Donald S. Clark
Secretary