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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of	)	
	)	**DOCKET NO. C-4140**
NEW MILLENNIUM ORTHOPAEDICS, LLC,	)	
a limited liability company,	)	
	)	
ORTHOPAEDIC CONSULTANTS OF CINCINNATI, INC., dba WELLINGTON ORTHOPAEDICS & SPORTS MEDICINE,	)	
a professional corporation, and	)	
	)	
BEACON ORTHOPAEDICS & SPORTS MEDICINE, LTD.,	)	
a limited liability company.	)	
	)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.* ("FTC Act"), and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to

NATURE OF THE CASE

1. This matter concerns horizontal agreements among competing orthopaedic physicians in the Cincinnati, Ohio, area to fix prices charged to health plans and third party payors ("payors"), and to refuse to deal with payors. The orthopaedic physicians orchestrated these

payors' relationship with the enrollees. These contracts may reduce the payors' costs and permit them to lower medical care costs, including the price of health insurance and out-of-pocket medical care expenses, for enrollees.

8. Physicians organize their practices under several models, including but not limited to, sole proprietorships, partnerships, limited liability companies, and professional corporations (collectively "physician entities"). Absent agreements among competing physician entities on the terms on which they will provide services to the enrollees of payors, competing physician entities decide unilaterally whether to enter into contracts with payors to provide services to the payors' enrollees, and on what prices and other terms and conditions they will accept under such contracts.

9. Medicare's Resource Based Relative Value Scale ("RBRVS") is a system used by the United States Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. The RBRVS approach provides a method to determine fees for specific services. In general, payors in the Cincinnati area make contract offers to individual physicians or groups at a price level specified as some percentage of the RBRVS fees for a particular year (*e.g.*

increasing the percentage of surgical procedures performed at ambulatory surgery centers ("ASCs").

13. The ASC bonus scheme solely targeted outpatient surgery, which was only one aspect of the practices of some NMO physicians. Under the ASC bonus scheme, the measured change in the physicians' behavior was limited to the movement of patients to ASCs. Non-surgeon members of NMO, who accounted for approximately 30% of NMO physicians, lacked the ability to change practice patterns related to ASCs. Thus, the ASC bonus scheme did not act as a substantial incentive for all of the NMO physicians to work together to achieve significant efficiencies for all of their services, which had jointly negotiated rates.

NMO'S HEALTH PLAN NEGOTATIONS

14. Beginning in August, 2002, representatives of NMO sent letters to representatives of the four (4) major health plans in the Cincinnati area. They proposed an arrangement that would implement the guaranteed base fee schedule and ASC bonus scheme. Only one health plan agreed to NMO's terms and signed contracts with Wellington and Beacon. Under the jointly negotiated and identical contracts, the health plan paid Wellington and Beacon physicians incentive payments for all of their services if the combined group met targets for diverting surgeries to ASCs and away from hospitals. Under the bonus program, the health plan agreed to pay the physicians an additional 2.5 percentage points to the fee schedules, per benchmark period, if Wellington and Beacon, combined, performed 50%, 60%, 65%, and then 70% of their outpatient procedures at ASCs for each six month period starting from January 1, 2003. The agreement did not require the physicians to reach the initial benchmark before receiving the first bonus payment. Rather, the health plan pre-paid the bonus percentage points for each period but could suspend additional increases in the following period if the physicians did not meet the set targets. Accordingly, Wellington and Beacon would retain a minimum 2.5 percentage point increase even if they never met any of their targets.

15. NMO performed no role in enhancing the ability of the physicians to increase the number of procedures performed at ASCs instead of at hospitals. NMO did not implement any enforcement mechanisms to monitor and control the physicians' compliance with the bonus scheme. The bonus scheme, alone, did not affect the NMO physicians' ability to work together to control costs or to improve quality for all jointly negotiated services, including office-based, non-surgical procedures. To a large extent, the scheme was a reward for the physicians' pre-existing practice patterns. Prior to signing the agreement, Wellington physicians performed over 50% of their procedures at ASCs without the incentive of the bonus scheme.

16. NMO continued to attempt to negotiate agreements with the other health plans into 2004. In April, 2004, the health plan that had signed identical agreements, negotiated by NMO, with Wellington and Beacon, also negotiated with NMO for a substitute incentive program for the two groups. The physicians had reached the final target and maximum ASC payout prior to the end of the contract. Instead of receiving bonuses under the ASC scheme, NMO and the

health plan agreed that the health plan would pay bonuses to the groups under the health plan's own quality initiative that it had created to enhance preventive care by increasing the number of bone density tests ordered for a target patient population. This bonus program would have been offered to both groups separately, at individually adjusted benchmar

A. price and other forms of competition among NMO's physician members were unreasonably restrained;

B. prices for orthopaedic physician services in the Cincinnati area have increased or been maintained at artificially high levels; and

C. health plans, employers, and individual consumers were deprived of the benefits of competition among orthopaedic physicians.

VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

22. The combination, conspiracy, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, as amended