

**1410025**

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

**COMMISSIONERS:      Edith Ramirez, Chairwoman  
                                 Julie Brill**

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,

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## **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.



## 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

- 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

- 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