

Complaint

IN THE MATTER OF

**KEYSTONE ORTHOPAEDIC SPECIALISTS, LLC
AND
ORTHOPAEDIC ASSOCIATES OF READING,
LTD.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SECTION 7 OF THE CLAYTON ACT AND SECTION 5 OF THE
FEDERAL TRADE COMMISSION ACT.

Docket C-4562; File No. 141 0025

Complaint, December 14, 2015 – Decision, December 14, 2015

This consent order addresses the 2011 merger of six independent physician groups to form Keystone. Those practices are Respondent Orthopaedic Associates, Advanced Orthopaedics of Reading, Arthritis & Joint Replacement Center of Reading, P.C., Berkshire Orthopedic Associates, Inc., Commonwealth Orthopaedic Associates, Inc., and Reading Neck and Spine Center, P.C. (“Keystone Component Practices”). The Keystone Component Practices became divisions of Keystone after the Merger. The Merger combined 19 out of 25, or 76 percent, of the orthopedists practicing in Berks County. Thus eliminating the robust competition among orthopedists in Berks County. After the Merger, Keystone negotiated prices with health plans on behalf of all the previously competing Keystone Component Practices, and health plans could not offer a commercially marketable network that would appeal to Berks County residents without Keystone. Under the terms of the settlement, Keystone and Orthopaedic Associates are required to obtain prior approval from the Commission before acquiring any interests in each other, before acquiring another orthopedic practice in Berks County, and before hiring or offering membership to an orthopedist who has provided services in Berks County in the past year. Keystone and Orthopaedic Associates also are prohibited from anticompetitive, illegal activity such as coordinating their prices with other orthopedists in the market and jointly negotiating with or refusing to deal with payors. They also must terminate, without penalty, any existing contracts with payors for the provision of orthopedic physician services at the payors’ request.

Participants

For the *Commission*: Robert S. Canterman, Malcolm Catt, Ellen Connelly, Gary H. Schorr, and Steve Vieux.

For the *Respondents*: Jeffrey Brennan, McDermott Will & Emery LLP; Jesse Robinson, Blakinger, Byler & Thomas.

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by the Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondents Keystone Orthopaedic Specialists, LLC (“Keystone”) and Orthopaedic Associates of Reading, Ltd. (“Orthopaedic Associates”), have violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows.

NATURE OF THE CASE

1. This case challenges a consummated physician practice group merger among orthopedists in Berks County, Pennsylvania. In 2011, orthopedists affiliated with six independent physician groups merged their practices to form Keystone (the “Merger”). Those practices are Respondent Orthopaedic Associates, Advanced Orthopaedics of Reading, Arthritis & Joint Replacement Center of Reading, P.C., Berkshire Orthopedic Associates, Inc., Commonwealth Orthopaedic Associates, Inc., and Reading Neck and Spine Center, P.C. (“Keystone Component Practices”).

2. The Merger combined 19 out of 25, or 76 percent, of the orthopedists practicing in Berks County. The Merger has substantially lessened competition for orthopedic physician services in Berks County, Pennsylvania.

3. The Merger eliminated price and non-price competition among the Keystone Component Practices and created a dominant orthopedic practice. Following the Merger, Keystone exercised unilateral market power to raise prices for orthopedic physician services. As a result, most health plans in Berks County are paying prices for orthopedic physician services that are significantly higher than prices they paid prior to the Merger.

4. Although health plans are usually the direct customers for orthopedic physician services provided to many patients, higher

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prices for those services are passed on to employers and other group purchasers of health insurance plans. Such costs are ultimately borne by patients in Berks County through higher premiums, co-payments, and other out-of-pocket expenditures.

5. New market entry or expansion has not been sufficient to deter, prevent, or counter the anticompetitive effects of the Merger. Nor has the Merger produced merger-specific efficiencies sufficient to offset the actual anticompetitive harm from the Merger.

JURISDICTION

6. Keystone and Orthopaedic Associates are, and at all relevant times have been, engaged in commerce or in activities affecting commerce, within the meaning of the FTC Act and the Clayton Act. The Merger constitutes an acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

RESPONDENTS

7. Keystone is a professional limited liability company organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 1270 Broadcasting Road, Reading, Pennsylvania 19610. Keystone orthopedists have offices at various locations in Berks County.

8. Orthopaedic Associates is a professional corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 301 South Seventh Avenue, Suite 3220, West Reading, Pennsylvania 19611.

THE MERGER

9. On or about March 19, 2010, orthopedists from the Keystone Component Practices formed Keystone as a professional limited liability company. The Merger was consummated on or about January 1, 2011, when each orthopedist affiliated with the Keystone Component Practices entered into a Professional Services Agreement with Keystone to provide

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orthopedic physician services exclusively through Keystone. The Keystone Component Practices became divisions of Keystone.

10. After the Merger, the Keystone Component Practices no longer competed to provide orthopedic physician services in Berks County, and the Keystone orthopedists ceased doing business through their respective independent practices and began doing business exclusively through Keystone.

11. Three years after the Merger, in 2014, six orthopedists left Keystone and resumed doing business as Orthopaedic Associates.

COMPETITION BETWEEN PHYSICIANS

12. Competition between physicians occurs in two stages. In the first stage, providers compete for selection by health plans as in-network providers. To gain in-network status, a physician engages in negotiations with each health plan and enters into a contract. One of the critical terms that a physician and a health plan agree upon during a negotiation are the prices that the health plan will pay to the physician when the health plan's members obtain care from the physician.

13. Physicians benefit from in-network status by gaining access to the health plans' members as patients. Health plans benefit by negotiating discounted prices and being able to create commercially marketable and appealing provider networks, with geographic coverage and a scope of services sufficient to attract and satisfy a localized group of members, typically employers and their employees. The availability and number of alternative physicians is the primary source of a health plan's bargaining power to negotiate competitive prices on behalf of its members. Thus, an acquisition that reduces a health plan's choice of providers for particular healthcare services in a particular area reduces the health plan's bargaining power when negotiating with physicians, and can lead to higher prices and reduced incentive to maintain or improve quality.

14. Changes in the prices negotiated between physicians and health plans impact the health plan's members (i.e., employers and their employees). Employers generally have two alternative funding mechanisms for purchasing health insurance for their

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employees. Fully-insured employers and their employees pay premiums, co-pays, and deductibles in exchange for access to a health plan's provider network and for insurance against the cost of future care—that is, the health plan pays the insured-members' healthcare claims. Self-insured employers also have access to their health plan's network and negotiated prices but assume the risk for the costs of care provided to their employees. Self-insured employers must pay the entirety of their employees' health-care claims (aside from member cost-sharing, such as deductibles and co-payments) and, as a result, they immediately incur any price increases. Therefore, regardless of the funding mechanism, health plans act on behalf of employers and other health-plan members to create provider networks that offer convenience, high quality of care, and negotiated reimbursement rates. The costs to employers and health plan members are inextricably linked to the prices that health plans negotiate with each physician in their provider network.

15. In the second stage of competition, physicians compete with other in-network physicians to attract patients. Health plans typically offer multiple in-network providers with similar out-of-pocket costs, and those physicians compete primarily on non-price dimensions in this second stage to attract patients by competing on service, amenities, convenience, and quality of care.

THE RELEVANT MARKETS

16. For purposes of this Complaint, the relevant line of commerce is the provision of orthopedic physician services. Orthopedic physician services include surgery and other services provided by physicians who specialize as orthopedists to treat injuries and diseases of the musculoskeletal system.

17. The relevant geographic market in which to assess the effect of the Merger is Berks County, Pennsylvania. Health plans are unable to serve their members in Berks County without including Berks County orthopedists in their provider networks. Patients in Berks County generally do not leave the county to obtain orthopedic physician services.

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MARKET STRUCTURE

18. Before the Merger, competition among orthopedists, including the Keystone Component Practices, in Berks County was robust. At that time, 25 orthopedists in 11 practices competed to serve orthopedic patients. The Merger substantially eliminated this competition by combining 19 orthopedists into one practice, leaving only six orthopedists as competitors. Following the Merger, Keystone had 76 percent of the orthopedists practicing in Berks County.

19. The Horizontal Merger Guidelines issued by the Commission and the U.S. Department of Justice measure market concentration using the Herfindahl-Hirschman Index (“HHI”). A merger or acquisition is presumed likely to create or enhance market power, and thus is presumed illegal, when the post-merger HHI exceeds 2500 points and the merger or acquisition increases the HHI by more than 200 points. Here, the market concentration levels exceed these thresholds by a wide margin.

20. As a result of the Merger, health plans could not create a commercially marketable and appealing provider network without Keystone. Health plans were not able to attract and satisfy Berks County patients with a network that included only the few remaining non-Keystone orthopedists.

ANTICOMPETITIVE EFFECTS

21. The effects of the Merger have been to substantially lessen competition and create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways:

- a. Eliminating actual, direct, and substantial competition between the orthopedists in the Keystone Component Practices;
- b. Increasing the ability of the merged entity unilaterally to raise prices for orthopedic physician services; and

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- c. Reducing incentives to maintain or improve service and quality in the relevant market.

22. Before the Merger, the Keystone Component Practices competed and health plans could form a network with some, but not all, of the Keystone Component Practices. After the Merger, Keystone negotiated prices with health plans on behalf of all the previously competing Keystone Component Practices, and health plans could not offer a commercially marketable and appealing provider network to serve Berks County residents without Keystone. Thus, Keystone acquired substantial market power through the Merger, which it used to raise prices to most health plans operating in Berks County, including a Medicaid managed-care plan.

ENTRY CONDITIONS

23. Attracting new orthopedists to Berks County is difficult, expensive, and time intensive. Neither entry by new firms nor expansion by the remaining practices following the Merger has been timely or sufficient to deter, prevent, or counter the anticompetitive effects from the Merger.

EFFICIENCIES

24. In the more than four years since Keystone's formation, the Merger has not produced merger-specific efficiencies sufficient to offset the actual anticompetitive harm from the Merger.

VIOLATIONS CHARGED

25. The allegations of Paragraphs 1 through 24 above are incorporated by reference as though fully set forth.

26. The Merger substantially lessened competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an agreement constituting an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourteenth, day of December, 2015, issues its Complaint against Respondents.

By the Commission.

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

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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, 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,

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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

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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

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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,

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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

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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

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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:

1. that solely involves Physicians in the Respondent's Medical Group Practice; or
2. 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

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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

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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

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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.

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- 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

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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.

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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 on the fourteenth, day of December, 2025.

By the Commission.

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Appendix A

[letterhead of Relevant Respondent]

[name of Payor's CEO] [address]

Dear _____:

Enclosed is a copy of a complaint and a consent order ("Order") issued by the Federal Trade

Commission against Respondents Keystone Orthopaedic Specialists, LLC ("Keystone") and Orthopaedic Associates of Reading, Ltd. ("OAR").

Pursuant to Paragraph VI.C. of the Order, [Relevant Respondent] must allow you to terminate, upon your written request, without any penalty or charge, any contracts with [Relevant Respondent] that are in effect as of the date you receive this letter.

If you do not make a written request to terminate the contract, Paragraph VI.C. further provides that the contract will terminate on the earlier of the contract's termination date, renewal date (including any automatic renewal date), or anniversary date, which is [date].

You may, however, ask [Relevant Respondent] to extend the contract beyond [date], the termination, renewal, or anniversary date, to any date no later than [date], one (1) year after the date the Order becomes final.

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,

[Relevant Respondent to fill in information in brackets]

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****I. Overview**

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing a Consent Order (“Consent Agreement”) with Keystone Orthopaedic Specialists, LLC (“Keystone”), and Orthopaedic Associates of Reading, Ltd. (“Orthopaedic Associates”) (together “Respondents”). The Consent Agreement settles charges that Respondents violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

The Consent Agreement has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

The purpose of this analysis is to facilitate public comment on the Consent Agreement. The analysis is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way. Further, the Consent Agreement has been entered into for settlement purposes only and does not constitute an admission by Respondents that they violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

II. Background and Market Structure

Nineteen orthopedists affiliated with six independent orthopedic practices in Berks County, Pennsylvania, merged to form Keystone in January 2011 (the “Merger”). One of those practices is Respondent Orthopaedic Associates, and the other five practices are Advanced Orthopaedics of Reading, Arthritis & Joint Replacement Center of Reading, P.C., Berkshire Orthopedic Associates, Inc., Commonwealth Orthopaedic Associates, Inc., and Reading Neck and Spine Center, P.C. (“Keystone Component

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Practices”). The Keystone Component Practices became divisions of Keystone after the Merger.

Before the Merger, competition among orthopedists in Berks County was robust. At that time, 25 orthopedists in 11 independent practices competed to provide orthopedic physician services. The Merger substantially eliminated this competition by combining 19 out of 25, or 76 percent, of the orthopedists practicing in Berks County into one practice. Only six other orthopedists remained as competitors. After the Merger, the Keystone orthopedists ceased to do business through their respective independent practices and began doing business exclusively through Keystone. Three years after the Merger, in 2014, six orthopedists left Keystone and resumed doing business as Orthopaedic Associates for business reasons independent of the Commission’s investigation.

III. The Relevant Markets

The relevant line of commerce in which to analyze the Merger’s effects is the provision of orthopedic physician services. Orthopedic physician services include surgery and other services provided by physicians who specialize as orthopedists to treat injuries and diseases of the musculoskeletal system.

The relevant geographic market in which to assess the competitive effects of the Merger is Berks County, Pennsylvania. Patients in Berks County generally do not leave the county to obtain orthopedic physician services, and health plans are unable to serve their members in Berks County without including Berks County orthopedists in their provider networks.

IV. Effects of the Merger

Before the Merger, the Keystone Component Practices competed with each other, and health plans could form a network with some of the Keystone Component Practices. The Merger eliminated this competition and created a dominant orthopedic practice in Berks County. After the Merger, Keystone negotiated prices with health plans on behalf of all the previously competing Keystone Component Practices, and health plans could not offer a commercially marketable network that would appeal to Berks

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County residents without Keystone. Thus, Keystone gained substantial market power through the Merger, which it used to raise prices with most health plans with coverage in Berks County.

V. Entry

Recruiting new orthopedists to Berks County is difficult, expensive, and time intensive. Neither entry by new practices nor expansion by the remaining practices following the Merger has been timely or sufficient to offset the actual anticompetitive harm from the Merger. Nor is future entry to be timely, likely, or sufficient to do so.

VI. Efficiencies

The Merger has not produced merger-specific efficiencies sufficient to offset the actual anticompetitive harm from the Merger.

VII. The Decision and Order

The proposed Decision and Order (“Order”) is designed to maintain competition in the relevant market, including by prohibiting future anticompetitive consolidation, and by allowing health plans to cancel and renegotiate the contracts they entered with Keystone after the Merger was consummated.

In evaluating the remedies in the proposed Order, it is important to note that market conditions have changed since the 2011 Merger. Market concentration levels are lower now than after the Merger was consummated in 2011 due to orthopedists leaving Keystone. Most significantly, for reasons independent of and pre-dating the Commission’s investigation, six orthopedists separated from Keystone in 2014 and resumed doing business separately and independently as Orthopaedic Associates. Following the separation, Orthopaedic Associates has become a major player in the market with eight orthopedists. Keystone, in contrast, currently has 11 orthopedists, down from 19 when the Merger was consummated.

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Had Orthopaedic Associates remained a part of Keystone, the Commission likely would have sought divestiture. As it is, the unique circumstance of Orthopaedic Associates' separation from Keystone for business reasons pre-dating the Commission's investigation resulted in structural changes that factored into the Commission's decision not to pursue further structural relief. But a recombination of the two groups could raise serious antitrust concern. Therefore, the proposed Order is designed to maintain competition in the relevant market by, among other things, preserving the Orthopaedic Associates' separation, and by allowing health plans to avail themselves of current market conditions by renegotiating existing Keystone contracts. Orthopaedic Associates is a named Respondent because its orthopedists helped form Keystone and benefitted from Keystone's post-merger price increases. Moreover, putting Orthopaedic Associates under Order is necessary to obtain appropriate relief, as discussed below.

Paragraph II of the proposed Order preserves Orthopaedic Associates' separation by requiring Keystone and Orthopaedic Associates to obtain prior approval from the Commission before acquiring any interest in each other.

Paragraph III requires Keystone and Orthopaedic Associates to obtain prior approval from the Commission before either practice may acquire another orthopedic practice located in Berks County. Keystone and Orthopaedic Associates also must obtain prior approval before entering into any employment, membership, or other agreement of affiliation with an orthopedist who during the prior year provided services in Berks County.

The proposed Order also prohibits Keystone and Orthopaedic Associates from engaging in illegal concerted activity apart from merging or acquiring other practices in Berks County. Under the Horizontal Merger Guidelines, mergers may harm competition where a "market shows signs of vulnerability to coordinated conduct." In this case, the Commission is concerned that the effects of this consummated merger could linger because of the close ties developed between Keystone and Orthopaedic Associates. Keystone and the orthopedists affiliated with Orthopaedic Associates jointly negotiated with payors and shared price information for over three years before the Orthopaedic

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Associates orthopedists left Keystone. Therefore, Paragraph IV includes provisions prohibiting certain joint activity among competing orthopedists who are members of or employed by Keystone or Orthopaedic Associates in order to limit the risk of coordination.

Paragraph IV.A prohibits Keystone and Orthopaedic Associates from jointly negotiating or refusing to deal with payors, and from engaging in this conduct with other orthopedists in Berks County. Paragraph IV.B prohibits Keystone and Orthopaedic Associates from facilitating exchanges of information among orthopedists concerning whether, and on what terms, to contract with a payor. Paragraph IV.C bars attempts to engage in any action prohibited by Paragraphs IV.A or IV.B. Paragraph IV.D proscribes inducing anyone to engage in any action prohibited by Paragraphs IV.A through IV.C.

Certain kinds of agreements that do not raise antitrust concerns are excluded from the general bar on joint negotiations. Paragraph IV does not preclude Keystone or Orthopaedic Associates from engaging in conduct that is reasonably necessary to form or participate in “qualified risk-sharing” or “qualified clinically-integrated” joint arrangements, as defined in the Order. Paragraph V requires Keystone and Orthopaedic Associates to notify the Commission before initiating certain contacts regarding contracts with payors pursuant to these joint arrangements. Paragraph V also sets out the information necessary to satisfy the notification requirement.

Paragraph VI imposes other notification obligations on Keystone and Orthopaedic Associates and requires the termination of certain contracts that were entered into after the Merger. Paragraphs VI.A and VI.B require Keystone and Orthopaedic Associates to distribute the Complaint and Order to their respective orthopedist members and personnel identified in the Order, and to each payor that they have a record of having been in contact with since January 1, 2010.

Paragraph VI.C requires Keystone and Orthopaedic Associates to terminate, without penalty, any existing contracts with payors for the provision of orthopedic physician services at the earlier of a written request from a payor to terminate or the

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earliest termination or renewal date under the contract. Paragraph VI.C also allows a payor to extend a contract beyond the termination or renewal date for a period of no longer than one year from the date the order becomes final to allow payors sufficient time to renegotiate contracts with Keystone and Orthopaedic Associates. The contract termination requirement allows payors to avail themselves of current conditions in renegotiating contracts, where Keystone is no longer the dominant provider. Paragraph VI.D requires Keystone and Orthopaedic Associates to distribute payor requests for contract termination to their respective orthopedist members. Paragraph VI.E requires Keystone and Orthopaedic Associates to provide new orthopedists, payors, and various personnel not previously receiving a copy, a copy of the Order and the Complaint.

Paragraphs VII, VIII, and IX impose various obligations on Keystone and Orthopaedic Associates to report or provide access to information to the Commission to facilitate the monitoring of compliance with the Order. Finally, Paragraph X provides that the Order will expire in 10 years from the date it is issued.

Complaint

IN THE MATTER OF

CRAIG BRITTAINCONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATION OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4564; File No. 132 3120**Complaint, December 28, 2015 – Decision, December 28, 2015*

This consent order addresses respondent Craig Brittain's operation of a "revenge porn" website. Mr. Brittain obtained his content by pretending to be a woman on Craigslist's "woman seeking woman" section and exposed this content for commercial gain. The Commission's complaint alleges two violations of the FTC Act. Count I alleges that Respondent unfairly disseminated photographs of individuals with their intimate parts exposed, along with personal information about them, for commercial gain and without the knowledge or consent of those depicted, despite the fact that he knew or should have known that the individuals had a reasonable expectation their image would not be disseminated in that manner. Count II alleges that Respondent deceptively solicited photographs from individuals of themselves with their intimate parts exposed by misrepresenting that he would use such photographs solely for his personal private use. The consent order requires the respondent from disseminating, through a website or online service, a video or photograph of an individual with his or her intimate parts exposed without: disclosing to the individual that he will disseminate the image through a website and for commercial gain; and obtaining affirmative express consent in writing from the individual for such dissemination. It also requires Mr. Brittain from misrepresenting his collection, identity, or the identity of those providing content. He can no longer benefit from the images and personal information obtain in connection with his website.

*Participants**For the Commission: Melinda Claybaugh**For the Respondent: Craig Brittain, pro se***COMPLAINT**

The Federal Trade Commission, having reason to believe that Craig Brittain ("Respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Craig Brittain was the owner and operator of the website www.isanybodydown.com ("Website"). Individually