



DEPARTMENT OF JUSTICE
Antitrust Division

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April 16, 1997

Craig L. Caesar, Esquire
McGlinchey Stafford Lang, P.L.L.C.
643 Magazine Street
New Orleans, Louisiana 70160-0643

Dear Mr. Caesar:

This letter responds to your request, on behalf of Orthopaedic Associates of Mobile, P.A. ("Orthopaedic Associates") and the Bone & Joint Center of Mobile ("B&J"), for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, with respect to the proposed merger of Orthopaedic Associates and B&J. For the reasons set forth below, the Department has no present intention of challenging this merger. Our understanding of the facts is based largely on the representations made in your request and the information you submitted in support of it.

Orthopaedic Associates and B&J are two groups of orthopedic specialists practicing in the greater Mobile, Alabama area. Each of the groups has eight member physicians. The two groups represented that the proposed merger will lead to the creation of a distinct entity that will combine the two existing practices.

A large majority of patients currently treated by the two orthopedic groups come from the greater Mobile area (Mobile and Baldwin Counties), which has a total population of approximately 477,000. There are 50 providers of orthopedic services in that area. Consequently, the merger of Orthopaedic Associates and B&J would result in an integrated group practice with 16 of the 50 orthopedic providers (i.e., 32%) in the area.

The Department and the courts examine the lawfulness under the antitrust laws of a merger of physician practices under the same antitrust standards that they apply to any other merger or combination of competing entities. The Clayton Act requires the delineation of the proper "line of commerce" and "area of the country" (i.e.,

the relevant product and geographic markets) and then the evaluation of the likely economic effect of the merger in that market (or markets). The merger is unlawful if it may tend substantially to lessen competition in any relevant market by creating, enhancing, or facilitating the exercise of market power. See Department of Justice/Federal Trade Commission Horizontal Merger Guidelines, 4 Trade Reg. Rep. (CCH) ¶ 13, 104 (April 2, 1992), § 2. "Market power" is generally defined as "the power to control prices [or restrict output] or exclude competition." United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 391 (1956).

Relying substantially upon the information contained in your submissions to us, we have evaluated the likely competitive effects of the proposed merger of Orthopaedic Associates and B&J in the market for orthopedic services provided by orthopedic specialists.

In your submissions, you asserted a broad geographic market beyond the greater Mobile area. While you noted that physicians in the two groups currently treat patients from geographic areas outside the greater Mobile area, this fact alone does not allow us to conclude that orthopedic specialists in the greater Mobile area compete significantly with orthopedic specialists outside the greater Mobile area. It has been our experience that, in general, and especially in urban and semi-urban areas, health care geographic markets are localized. Although this is somewhat less the case for health care specialist markets than it is for primary care markets, we are unable to conclude, based on the information you have submitted to us, that the appropriate geographic market for purposes of analyzing the proposed merger of Orthopaedic Associates and B&J is likely to be any larger than the more localized market of the greater Mobile area.

As previously noted, based on information you have provided us, a merger of Orthopaedic Associates and B&J in the greater Mobile area would result in the combined entity having a 32 percent share of the total number of orthopedic specialists who practice in that area. Such a combination could raise competitive concerns, but in this case no managed care plan or other third-party payer has expressed any concern that the proposed merger might cause anticompetitive effects. In fact, one payer noted that even if the proposed merged entity were to raise prices, the payer would have "at least 12 alternative" orthopedic specialists or groups of specialists from which it could obtain orthopedic services. Given these considerations and based on the information presently available to us, it does not appear that the merger of Orthopaedic Associates and B&J would likely lessen competition substantially in the greater Mobile area.

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The Department, therefore, has no present intention to challenge the merger of Orthopaedic Associates and B&J. In accordance with our normal practice, however, the Department remains free to bring an enforcement action in the future should the merger prove to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately. In addition, any supporting data that you do not identify to be confidential business information under Paragraph 10(c) of the Business Review Procedure within 30 days of the date of this letter will also be made publicly available.

Sincerely,

Joel I. Klein