



# Department of Justice

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**JUSTICE DEPARTMENT WILL NOT CHALLENGE JOINT VENTURE  
OF NEW MEXICO ORTHOPEDIC SPECIALISTS**

WASHINGTON, D.C. -- The Department of Justice said today that it would not challenge a proposed joint venture among orthopedic specialists in Albuquerque, New Mexico.

In a Business Review Letter issued by the Department's Antitrust Division, Joel I. Klein, Acting Assistant Attorney General said, "the proposed joint venture of Southwest Orthopedic Specialists (SOS) meets the safety zone criteria for non-exclusive physician joint ventures, and thus will not be challenged by the Department."

Under the proposal, the risk-bearing joint venture would be created among ten initial orthopedic specialists in Albuquerque. SOS would then recruit additional members to provide adequate coverage for third party payers whose enrollees live throughout the state of New Mexico. At no time, however, would the group exceed 30% of the orthopedic specialists in any relevant geographic market. SOS views Albuquerque as its primary market, but notes that since Albuquerque is the only tertiary health care center in New Mexico, specialists in Albuquerque essentially serve a statewide population.

Risk would be shared among group members either by accepting "capitated rates" from third party insurers, or by offering

services under a discounted fee-for-service schedule with a 15% "withhold held at risk" unless SOS as a group meets certain efficiency and quality goals. Information regarding each member's charges and other competitively sensitive issues would be collected by an independent agent, who would generate a fee schedule and other proposed contract terms for approval by the SOS Board of Directors. If approved, the fee schedule and other terms would be used as a basis for negotiating contracts with managed care groups on behalf of the members of SOS.

There are approximately 72 orthopedic specialists in the Albuquerque metropolitan area, including one group of 14 orthopedists and one sports medicine/family practice specialist that SOS believes holds a significant percentage of managed care contracts in the Albuquerque area. SOS would thus be providing a competitive alternative to this group for payers with covered lives in Albuquerque and New Mexico.

Statement 8 of the Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Department of Justice and the Federal Trade Commission states that, absent extraordinary circumstances, the Department will not challenge a non-exclusive physician network joint venture whose participants share substantial financial risk and constitute 30% or fewer of the physicians in a practice specialty in a relevant market.

Under the Department's business review procedure, an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division will challenge the action under the antitrust laws.

A file containing the business review request and the Department's response may be examined in the Legal Procedure Unit of the Antitrust Division, Suite 215 Liberty Place, 325 7th Street, N.W., Department of Justice, Washington, D.C. 20004. After a 30-day waiting period, the documents supporting the business review will be added to the file, unless a basis for their exclusion for reasons of confidentiality has been established pursuant to Paragraph 10(c) of the Business Review Procedure.

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