



DEPARTMENT OF JUSTICE
Antitrust Division

ANNE K. BINGAMAN
Assistant Attorney General

Main Justice Building
10th & Constitution Ave., N.W.
Washington, D.C. 20530
(202) 514-2401 / (202) 616-2645 (f)
antitrust@justice.usdoj.gov (internet)
<http://www.usdoj.gov> (World Wide Web)

September 15, 1995

Steven John Fellman, Esquire
Galland, Kharasch, Morse & Garfinkle, P.C.
Canal Square
1054 Thirty-First Street, N.W.
Washington, D.C. 20007-4492

Dear Mr. Fellman:

This letter responds to your request on behalf of Hanger Orthopedic Group, Inc. ("Hanger") for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, regarding Hanger's plans to form a national orthotists and prosthetists contracting organization.¹

Based on the information provided, we understand that Hanger manufactures and distributes orthotic and prosthetic ("O&P") devices and their components, and currently owns over eighty (80) O&P clinical facilities ("clinics") throughout the United States.² Hanger proposes to form a network of O&P clinics by acquiring or contracting with additional O&P clinics nationwide. Hanger will not acquire or contract with more than one O&P clinic (or one orthotic clinic and one prosthetic clinic) in any relevant geographic market.

You have represented that in relevant geographic markets where Hanger already owns an O&P clinic, that clinic will be the sole member of the network. When Hanger contracts with an O&P clinic (or an orthotic clinic and a prosthetic clinic), the contract for the orthotic or prosthetic services will be exclusive if the clinic's orthotists or prosthetists earn no more than twenty percent (20%) of the total revenue for orthotic or prosthetic services in the relevant geographic market. If a clinic's orthotists or prosthetists earn more than twenty percent (20%) of the total revenue for orthotic or prosthetic services in the relevant geographic market, the contract for the orthotic or prosthetic services will be non-exclusive.

Hanger will negotiate the terms of the network contracts with third-party payors itself. The contracting O&P clinics will be offered newly negotiated contracts on a "take-it-or-leave-it" basis,

¹ Orthotics is concerned with the design and use of mechanical devices to support or supplement weakened joints or limbs, whereas prosthetics is concerned with the artificial replacement of a limb, tooth, or other part of the body.

² An O&P clinic is a facility where orthotists and prosthetists design, construct, fit, and otherwise provide health care consumers with custom O&P devices prescribed by their physicians.

i.e., network members must accept the contracts without further negotiation or change. Hanger has the option to notify members who fail to accept a new contract that they must exit the network. When Hanger renegotiates a contract with a third-party payor, members have ninety (90) days to notify Hanger that they will not accept the new terms. Members who so notify Hanger may continue to provide services on the remaining contracts, without having to exit the network. Hanger may force any member to leave the network at any time, provided Hanger gives the member six (6) months' notice. Likewise, any member may exit the network at any time, provided the member gives Hanger six (6) months' notice.

All members will be required to participate in Hanger's quality assurance program. Members will be permitted to purchase O&P devices from any vendor, provided the devices are of at least the same quality as those sold by Hanger.

Hanger's O&P network will compete with other national O&P networks in those relevant geographic markets where Hanger and one or more other O&P networks own or contract with O&P clinics.

Since none of the members of the Hanger network will be competitors in any relevant geographic market, the proposed joint venture does not pose any significant competitive issues. This is particularly so because Hanger will enter into a contract with an O&P clinic which provides that the clinic's orthotists or prosthetists are exclusive only when the orthotists or the prosthetists earn no more than twenty percent (20%) of the revenue for those services in the relevant geographic market. Consequently, the Department of Justice has no present intention of challenging the proposed Hanger network.

In accordance with our normal practice, however, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest if the proposed network proves to be anticompetitive in purpose or effect.

This statement is made in accordance with the Department of Justice Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be made publicly available immediately. In addition, any supporting data that you have not identified as confidential business information under paragraph 10(c) of the Business Review Procedure also will be made publicly available thirty days after the date of this letter.

Sincerely,

/S/

Anne K. Bingaman
Assistant Attorney General