

HINKLE, COX, EATON, COFFIELD & HENSLEY,
L.L.P.

ATTORNEYS AT LAW

SUITE 800

500 MARQUETTE N.W. POST OFFICE BOX 2043

ALBUQUERQUE, NEW MEXICO 87103

(505) 768-1500 FAX (505) 768-1529

LEWIS C. COX, JR. (1924-1993)

CLARENCE E. HINKLE (1904-1985)

OF COUNSEL

O. M. CALHOUN* JOE W. WOOD

RICHARD L. CAZZELL* RAY W. RICHARDS*

AUSTIN AFFILIATION

HOFFMAN & STEPHENS, P.C.

KENNETH R. HOFFMAN*

TOM D. STEPHENS*

RONALD C. SCHULTZ, JR.*

JOSE CANO*

THOMAS E. HOOD*
REBECCA NICHOLS JOHNSON
STANLEY K. KOTOVSKY, JR.
ELLEN S. CASEY
MARGARET CARTER LUDEWIG
S BARRY PAISNER
WYATT L. BROOKS*
DAVID M. RUSSELL*
ANDREW J. CLOUTIER
STEPHANIE LANDRY
KIRT E. MOELLING*
DIANE FISHER
JULIE P. NEERKEN
CHRISTOPHER M. MOODY
JOHN D. PHILLIPS
EARL R. NORRIS
JAMES A. GILLESPIE
MARGARET R. MCNETT

GARY W. LARSON
LISA K. SMITH*
NORMAN D. EWART
DARREN T. GROCE*
MOLLY MCINTOSH
MARCIA B. LINCOLN
SCOTT A. SHUART*
PAUL G. NASON
AMY C. WRIGHT*
BRADLEY G. BISHOP*
KAROLYN KING NELSON
ELLEN T. LOUDERBOUGH
JAMES H. WOOD*
NANCY L. STRATTON
TIMOTHY R. BROWN
JAMES C. MARTIN
KATHLEEN M. HALL

*NOT LICENSED IN NEW MEXICO

PAUL W. EATON
CONRAD E. COFFIELD
HAROLD L. HENSLEY, JR.
STUART D. SHANOR
ERIC D. LANPHERE
C. D. MARTIN
ROBERT P. TINNIN, JR.
MARSHALL G. MARTIN
MASTON C. COURTNEY*
DON L. PATTERSON*
DOUGLAS L. LUNSFORD
NICHOLAS J. NOEDING
T. CALDER EZZELL, JR.
WILLIAM B. BURFORD*
RICHARD E. OLSON*
RICHARD R. WILFONG*
THOMAS J. MCBRIDE
NANCY S. CUSACK

JEFFREY L. FORNACIARI
JEFFREY D. HEWETT
JAMES BRUCE
JERRY F. SHACKELFORD*
JEFFREY W. HELLBERG*
WILLIAM F. COUNTISS*
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THOMAS M. HNASKO
JOHN C. CHAMBERS*
GARY D. COMPTON*
W. H. BRIAN, JR.*
RUSSELL J. BAILEY*
STEVEN D. ARNOLD
THOMAS D. HAINES, JR.
GREGORY J. NIBERT
FRED W. SCHWENDIMANN
JAMES M. HUDSON
JEFFREY S. BAIRD*

February 10, 1997

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joel Kline, Esq.
Acting Assistant Attorney General
Antitrust Division
United States Department of Justice
10th and Constitution Avenues, N.W.
Washington, DC 20530

Re: Request for a United States Department of Justice Expedited Business Review Letter
for Southwest Orthopedic Specialists

Dear Mr. Kline:

Pursuant to the United States Department of Justice's Antitrust Division business review procedure (28 C.F.R. § 50.6) and the Department's pilot expedited business review procedure announced on December 1, 1992 (58 Fed. Reg. 6132 (1993)), our law firm hereby requests a business review response letter on behalf of the Southwest Orthopedic Specialists ("SOS"). More specifically, we request a statement of the Department's current enforcement intention with respect to the proposed formation, business conduct and operations of a SOS, a proposed physician network joint venture consisting orthopedists and other related specialists serving New Mexico.

In making this request, we understand our affirmative obligation to make a full and true disclosure regarding the proposed business conduct. We base our request upon the best information known to date and upon reasonable estimates of future activity. We verify that we make this expedited business review request in good faith, and we have made a diligent search for information required to be submitted pursuant to 28 C.F.R. § 50.6. SOS will review and implement suggested modifications to its proposed operations to address any antitrust concerns of the Department.

I. Organization.

SOS intends to form a not-for-profit, taxable corporation under the laws of the State of New Mexico. The principal place of business for SOS will be Albuquerque, New Mexico. Membership in the corporation will be limited to specialists in orthopedics and related fields who have been

POST OFFICE BOX 10
ROSWELL, NEW MEXICO 88202
(505) 622-6510
FAX (505) 623-9332

POST OFFICE BOX 3580
MIDLAND, TEXAS 79702
(915) 683-4691
FAX (915) 683-6518

POST OFFICE BOX 9238
AMARILLO, TEXAS 79105
(806) 372-5569
FAX (806) 372-9761

POST OFFICE BOX 2068
SANTA FE, NEW MEXICO 87504
(505) 982-4554
FAX (505) 982-6623

401 W. 15TH STREET, SUITE 800
AUSTIN, TEXAS 78701
(512) 476-7137
FAX (512) 476-5431

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credentialed by SOS. The corporation will be governed by a Board of Directors, and will have standing committees, such as credentialing and quality assurance/utilization review. Finalization of organizational documents is pending completion of this review.

Initially, 10 physicians specializing in orthopedics are expected to participate in this venture (Exhibit A). Physician Members would be required to submit an initial application fee of \$2,000, and pay such annual membership fees as the Board of Directors determines to be necessary and appropriate to support SOS' activities. Each participating physician would be required to meet initially, and maintain compliance with, SOS' credentialing criteria.

After SOS is formed, SOS intends to recruit additional Physician Members to assure adequate access for beneficiaries of contracting health care plans. However, the number of physician providers shall not exceed the permitted "safety zone" for a physician non-exclusive network as established by the Department of Justice and the Federal Trade Commission, entitled "Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust."

II. Activities.

SOS will market specialty physician medical services in the field of orthopedics to health benefit plans (HMOs, other health insurance carriers, large self-insured employers, and multi-physician primary care organizations) serving primarily New Mexico. In addition, SOS will offer local businesses and employers the opportunity to interact directly with physicians and to access "bundled" sets of medical and surgical services under a simplified and unified bill. SOS will negotiate and enter into contracts with these plans/organizations on a regional and/or statewide basis, under which SOS members will provide medical services to the beneficiaries of the health plans/organizations.

SOS will provide physician services either on the basis of its receiving a capitated payment or under a discounted fee-for-service schedule for its member physicians with an appropriate "risk pool" withhold of the fees due each physician. The withhold will be distributed to the participating physicians only if the panel of doctors as a group meets established efficiency and quality parameters. If the group meets those requirements, the amount of the withhold will be distributed according to each doctor's compliance with established protocols and procedures. In this manner, SOS will offer a mechanism for private physicians to share risk and participate efficiently and effectively in managed care.

SOS proposes several safeguards designed to address concerns about sharing price information. In establishing the payment terms under which SOS will contract with payers, SOS will hire independent health care consultants to gather and prepare an aggregate of information relating to utilization, quality standards, cost of purchased services, fees, charges, and clinical outcomes. The consultants will use this information to create a data base, prepare a statistical analysis and develop a proposed fee structure and minimum acceptable contract terms. If the SOS Board of Directors votes to approve the proposed fee schedule and minimum contract terms, the SOS will be

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authorized to enter into contracts that meet those minimum requirements and bind its member physicians to those terms.

No physician participating in SOS, including board members, will have access to any other member physician's fees, pricing or volume information, or any other individual physician's information collected by the consultants. In addition, each SOS participating physician will be expressly prohibited from disclosing any information regarding usual and customary charges or the charges the physician has agreed to accept under any other managed care arrangement to any other SOS physician.

SOS intends to implement ongoing monitoring, quality assurance and utilization review of services provided by its Member Physicians to offer a unique and innovative product to health plans. To that end, SOS will develop utilization review, quality assurance standards, practice parameters, and other practice management information. The information gathered will be used to assist Member Physicians in understanding and modifying as appropriate the manner and method of delivering service to assure quality, and promote efficiency and cost-effectiveness. The information gathered will also provide SOS with basis for developing training and educational seminars to help modify practice patterns of referring primary care physicians as well as participating Member Physicians.

SOS may enter into contracts for group purchasing of medical supplies and equipment, on behalf of its physician providers in order to facilitate the delivery of less-costly health care services.

SOS physician providers will participate in the network on a nonexclusive basis. Individual member providers will be able to affiliate and contract directly with competing multi-specialty networks, primary care groups, independent practice organizations, physician hospital organizations, managed care plans and other third-party payers.

SOS anticipates that its primary geographical market would be the greater Albuquerque and Bernalillo County area and its secondary geographic market to be the entire State of New Mexico. Because Albuquerque is the only true tertiary service center in New Mexico, the physicians who will participate in SOS actually service a state-wide population.

III. Competition

In the State of New Mexico there are a total of approximately 3,311 physicians.¹ Of these physicians, approximately 100 are orthopedists as defined under the SOS proposed structure.² SOS will represent only 16% of the approximately 62 orthopedic specialists in the Albuquerque metro

¹Statistics represents information for 1996 obtained from the New Mexico Board of Medical Examiners.

²Statistics derived from 1996 membership rosters of the New Mexico Orthopaedic Association and the American Academy of Orthopaedists.

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area,³ the area designated as the primary service area of SOS. In addition, many other surgeons are qualified and enjoy privileges to perform similar procedures, including surgeons, neurosurgeons, neurologists, podiatrists, family practice specialists, chiropractors, and sports medicine specialist. Therefore, in actuality, the effective percentage of participation of physicians in relevant specialties is well below the "safe harbor" maximum percentages for participation set forth in the antitrust guidelines.

It should be noted that in addition to the many competing multi-specialty networks, primary care groups, independent practice organizations, physician hospital organizations, and HMOs that currently exist in New Mexico, there is a dominant orthopedic group in Albuquerque that consists of 14 orthopedists and one sports medicine/family practice specialist. SOS believes that this group holds or manages contracts that control a significant percentage of managed care enrollees in the primary and secondary service area. SOS hopes to provide alternative options for managed care plans seeking to contract with a "group," i.e., network, of orthopedic providers.

At this time, SOS does not have a marketing or business plan other than what has been described in this letter. The issue of antitrust, however, has been discussed in the organizational meetings with members and as a result, a decision was made to request an expedited review letter.

If you have any questions concerning this request, please feel free to contact me directly. Thank you for your consideration.

Very truly yours,

HINKLE, COX, EATON,
COFFIELD & HENSLEY, L.L.P.

By: 

Diane Fisher

DF:bjr
Enclosure
cc: Michael Mitnik, M.D.
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³Statistics derived from 1996 membership rosters of the New Mexico Orthopaedic Association and the American Academy of Orthopaedists.

EXHIBIT A

Alan Altman, M.D.	700 Lomas Boulevard NE, Albuquerque, NM 87102
Brian Altman, M.D.	700 Lomas Boulevard NE, Albuquerque, NM 87102
Robert Benson, M.D.	7520 Montgomery Boulevard NE, Albuquerque, NM 87109
Thomas Grace, M.D.	8301 Spain Road NE, Albuquerque, NM 87109
Keith Harvie, M.D.	4325 Carlisle Boulevard NE, Albuquerque, NM 87107
Joseph Hollinger, M.D.	500 Walter NE, Albuquerque, NM 87102
Lloyd Hurley, M.D.	717 Encino Place NE, Albuquerque, NM 87102
Michael Mitnik, M.D.	4801 McMahon Boulevard NW, Albuquerque, NM 87114
Richard Rock, M.D.	8012 Pennsylvania Circle NE, Albuquerque, NM 87110
Richard Weber, D.O.	101 Hospital Loop NE, Albuquerque, NM 87109