

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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Date Mailed: March 18, 2024

**STATE OF OREGON
OREGON HEALTH AUTHORITY
HEALTH POLICY AND ANALYTICS DIVISION**

In the Matter of the Proposed) Proposed Findings of Fact, Conclusions of
Material Change Transaction of Agility) Law, and Order
Podiatry MSO, KeiperSpine, and Spine Surgery)
Center of Eugene) Transaction ID: 017

This Order resolves the Notice of Material Change Transaction (the “Notice”) filed by Agility Podiatry MSO, LLC dba Unity MSK (“Agility”) on or about November 16, 2023, with respect to its proposed acquisition of substantially all non-clinical assets of KeiperSpine P.C. (“KeiperSpine”), its proposed acquisition of a majority equity stake of Spine Surgery Center of Eugene, LLC (“SSCE”), and its proposed agreement to provide ongoing administrative services to KeiperSpine (together, the “Transaction”). (Agility, KeiperSpine, and SSCE are sometimes referred to collectively as the “Entities.”)

The Entities filed the Notice with the Oregon Health Authority (“OHA”) under the Health Care Market Oversight Program pursuant to Oregon Revised Statutes (ORS) 415.500 through 415.900 and Oregon Administrative Rules (OAR) 409-070-0000 through 409-070-0085.

On December 18, 2023, OHA confirmed receipt of a complete Notice of Material Change Transaction in compliance with OAR 409-070-0030 and 0045. Pursuant to ORS 415.501(5) and OAR 409-070-0055, OHA timely conducted a preliminary review of the proposed Transaction. OHA’s review analyzed the potential impact of the Transaction in four domains: cost, access, quality, and equity. The analysis followed guidelines and methods set out in the Health Care Market Oversight Analytic Framework (see <https://www.oregon.gov/oha/HPA/HP/HCMOPageDocs/OHA-HCMO-Analytic-Framework-FINAL.pdf>), which is grounded in the goals, standards, and criteria for Transaction review and approval outlined in OAR 409-070-0000 through OAR 409-070-0085. OHA’s analysis will be posted to the HCMO website at <https://www.oregon.gov/oha/HPA/HP/Pages/HCMO-transaction-notices-and-reviews.aspx>, and is incorporated herein by reference. A public comment period was open from December 18, 2023 through January 8, 2024. OHA did not receive any public comments.

Now, therefore, upon due consideration of the circumstances, including the Notice of Material Change Transaction, documentation filed in support of the Notice of Material Change Transaction, databases maintained by OHA, websites of the Entities, press reports, academic research articles, and other publicly available reports, OHA enters the following Proposed Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

OHA FINDS that:

1. On or about November 16, 2023, Agility filed the Notice with OHA.
2. On or about November 30, 2023, OHA notified Agility that the Notice was incomplete, provided guidance about submission requirements, and issued a supplemental information request for additional information to inform OHA's review of the proposed Transaction.
3. On or about December 8, 2023, Agility filed a revised Notice with OHA.
4. On or about December 14, 2023, OHA notified Agility that the Notice was incomplete and provided guidance about submission requirements.
5. On or about December 15, 2023, Agility filed a revised Notice with OHA.
6. On or about December 18, 2023, OHA notified Agility that it received a complete Notice. However, the November 30, 2023, supplemental information request remained unanswered. OHA notified the Entities that the preliminary review period was tolled pursuant to OAR 409-070-0045(6) pending receipt of a complete response to OHA's supplemental information request.
7. On or about January 8, 2024, Agility submitted partial responses to OHA's supplemental information request and the preliminary review period remained tolled.
8. On or about February 15, 2023, Agility submitted the remaining outstanding information to OHA's supplemental information request.
9. On or about February 16, 2023, OHA notified Agility that all requested additional information had been received and the preliminary review period resumed.
10. OHA held a public comment period from December 18, 2023, through January 8, 2024, and received no public comments.
11. Agility is a foreign limited liability company incorporated in Delaware. Agility provides administrative and management services to Northwest Extremity Specialists, LLC, ("NES") an Oregon limited liability company.
12. Agility is member-managed entity that is wholly owned and managed by its sole member Agility Intermediate, Inc. ("Agility Intermediate"), a Delaware Corporation.
13. Agility Intermediate is wholly owned by Agility Health Holdings, LLC, ("Holdings") a Delaware limited liability company. Agility Intermediate is an intermediate holding company managed by its Board of Directors, which are appointed by Holdings.

14. Holdings is a manager-managed limited liability company managed by its Board of Managers and owned by a mix of investors, the largest and majority investor being THP Agility Holdings, LLC., (“THP”) a Delaware limited liability company. THP is an investment entity of Trinity Hunt Partners, a private investment firm.
15. KeiperSpine is an Oregon professional corporation owned by Dr. Glenn Keiper, M.D. and Dr. Jonathan Sherman, M.D. KeiperSpine has one location in Eugene, Oregon.
16. SSCE is an Oregon member-managed limited liability company and an Oregon licensed ambulatory surgery center. SSCE is owned and managed by Dr. Glenn Keiper, M.D., Dr. Jonathan Sherman, M.D., Dr. Carmina Angeles, M.D., Dr. Steven Surrectt, M.D. SSCE has one location and is co-located with KeiperSpine.
17. According to the Notice and Term Sheet supplied by the Entities, Agility will purchase substantially all non-clinical assets of KeiperSpine, and the majority interest of equity interest in SSCE. KeiperSpine and Agility will enter into an administrative services agreement, where Agility will provide non-clinical administrative services support to KeiperSpine for an arms-length administrative fee.
18. The Entities have represented to OHA that:
 - a. All clinical employees, including physicians and advanced practice providers, will enter into amended and restated employment agreements with KeiperSpine and will continue to practice independently.
 - b. Agility will hire substantially all of the non-clinical employees of KeiperSpine and will assume KeiperSpine’s lease for the clinic space.
 - c. The Transaction will not result in a change of ownership of KeiperSpine.
 - d. Agility does not anticipate any changes to health care services at KeiperSpine as part of the Transaction.

CONCLUSIONS OF LAW

1. The Notice is supported by the required documentation and meets the requirements of the Health Care Market Oversight Program rules for approval with respect to acquisitions of health care Entities pursuant to ORS 415.500 through 415.900 and Oregon Administrative Rules (OAR) 409-070-0000 through 409-070-0085.
2. OHA finds that:
 - a. The transaction is not likely to substantially alter the delivery of health care in Oregon.
 - i. The acquisition of substantially all the non-clinical assets of KeiperSpine and a majority equity stake of SSCE along with KeiperSpine and Agility entering into an administrative services agreement are unlikely to substantially alter the delivery

of health care in Oregon. No consolidation is occurring as a result of the proposed Transaction.

ORDER AND CONDITIONS

Based on the foregoing Findings of Fact and Conclusions of Law it is hereby ORDERED that:

1. The Transaction is hereby APPROVED WITH CONDITIONS upon the basis of the information contained in the Notice of Material Change Transaction to date.
2. For a period of five (5) years following the close of the transaction, this Order shall be conditioned upon and subject to the following:
 - a. The transacting parties shall complete the Transaction consistent with the Notice of Material Change Transaction (“notice”), and as conditionally approved by OHA.
 - b. Neither Agility nor any of its parent entities shall require clinical employees of KeiperSpine and/or SSCE, including physicians and advanced practice providers, to enter into employment agreements with Agility, or any of its parent entities, as a result of this Transaction.
 - c. Neither Agility nor its parent entities shall jointly negotiate payer contracts with NES, KeiperSpine, SSCE, or any other entity in Oregon, that is owned, affiliated with, or controlled by Agility or its parent entities.
 - d. Physicians and advanced practice providers treating patients at KeiperSpine or SSCE shall be responsible for all clinical decisions, including decisions regarding:
 - i. the treatment and services that are appropriate for patients,
 - ii. the diagnostic tests that are appropriate for a particular condition,
 - iii. the treatment options available to patients, and
 - iv. deciding the duration (e.g., number of minutes) of patient visits.
 - e. A KeiperSpine senior, chief, or lead physician or advanced practice provider, or group thereof, as applicable, shall have ultimate decision-making authority over matters pertaining to all KeiperSpine-employed physicians’ and advanced practice providers’:
 - i. clinic and on-call schedules, as applicable;
 - ii. financial compensation and bonuses, as applicable; and
 - iii. employment contract renewal or extension, as applicable.
 - f. KeiperSpine and SSCE shall continue serving patients with Medicare coverage.

This Order will be posted to the Health Care Market Oversight Program website at <https://www.oregon.gov/oha/HPA/HP/Pages/health-care-market-oversight.aspx>.

OHA reserves the right to enforce the Conditions set forth herein to the fullest extent provided by the law. In addition to civil penalties and any legal remedies available, OHA shall be entitled to specific performance, injunctive relief, and such other equitable remedies as a court may deem appropriate for breach of these Conditions.

OHA is required to analyze and publish the Entities' compliance with Conditions placed on the Transaction and to assess the impact of the Transaction under ORS 415.501(19) and (20), and OHA is required to publish its analyses and conclusions.

Per OAR 409-070-0080, OHA may require the Entities to provide any information, reports, analyses, and documentation needed to monitor and assess the impact of the Transaction.

NOTICE OF RIGHT TO REQUEST A HEARING

You are entitled to a hearing as provided by the Administrative Procedures Act (chapter 183, Oregon Revised Statutes), ORS 415.019, and OAR 409-070-0075. You are entitled to be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited resources. The Oregon Health Authority will be represented by an Assistant Attorney General from the Oregon Department of Justice.

To request a contested case hearing, your request must be in writing and must be received within fifteen (15) days from the date this Order was personally served, mailed, or electronically transmitted to you, based on the date at the top of this document.

A request sent by U.S. mail is "received" on the date it is postmarked. Your request may also be emailed. Your request should be sent to:

hcmo.info@oha.oregon.gov

or

Health Care Market Oversight Program
421 SW Oak St
Suite 850
Portland, OR 97204

If you submit a request for a contested case hearing, you will be notified of the time place of the hearing. Information on the hearing process will be provided to you in accordance with ORS 183.413(2). Any hearing will be conducted by an administrative law judge from the Office of Administrative Hearings, assigned as required by ORS 183.635.

If you fail to request a hearing within the time allowed, if you request a hearing and subsequently withdraw your request for a hearing, if you request a hearing and fail to appear for the hearing, or if a hearing is scheduled and you later notify OHA that you will not appear at the specified time and place, you will have waived your right to a hearing, and this proposed order will become a final order by default. If OHA issues a final order by default, it designates its file on this matter, including all materials that you

have submitted relating to this matter, as the record in this case for purposes of proving a prima facie case.

Dated this 18th day of March, 2024



Sarah Bartelmann, MPH
Health Care Market Oversight Program
Manager
Oregon Health Authority

NOTICE TO ACTIVE DUTY SERVICEMEMBERS. Active-duty service members have a right to stay these proceedings under the federal service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.