

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of Banking and)
Insurance, State of New Jersey, to fine OrthoNet of)
the Mid-Atlantic, Inc., Ref. No. 10001528.)

CONSENT
ORDER

TO: **OrthoNet of the Mid-Atlantic, Inc.**
Suite 240 1311
Mamaroneck Ave.
White Plains, NY 10605

This matter, having been opened by the Commissioner (“Commissioner”) of the State of New Jersey Department of Banking and Insurance (“Department”), upon information that OrthoNet of the Mid-Atlantic, Inc. (“Respondent”), currently licensed as an Organized Delivery System (“ODS”) pursuant to N.J.S.A. 17:48H-1 et seq., may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, the New Jersey Insurance Holding Company Systems Act, N.J.S.A. 17:27A-1 et seq. (“the Act”), and N.J.A.C. 11:1-35, set forth the standards and requirements for the acquisition of control of a New Jersey domestic insurer and the operations of insurance holding company systems, which include a New Jersey domestic insurer; and

WHEREAS, pursuant to N.J.S.A. 17:48H-1 an ODS is an entity organized for the purpose of facilitating the delivery of some or all of the health benefits under a health insurance contract;

WHEREAS, N.J.S.A. 17:48H-1 et seq. sets forth the filing and other requirements for entities to be licensed as an ODS in this State; and

WHEREAS, pursuant to N.J.S.A. 17:48H-16a, a licensed ODS, which is organized under the laws of this State, shall be treated as a domestic insurer; and

WHEREAS, pursuant to N.J.S.A. 17:27A-4a(2), certain transactions, including tax allocation agreements, involving a domestic insurer and any person in its insurance holding company system, may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into that transaction at least 30 days prior thereto, and the commissioner has not disapproved it within that 30-day period; and

WHEREAS, pursuant to N.J.A.C. 11:1-35.10(a), an insurer required to give notice of a proposed transaction pursuant to N.J.S.A. 17:27A-4 shall furnish the required information in a specific format to the Department within the applicable time frames set forth in N.J.S.A. 17:27A-4; and

WHEREAS, on or about September 29, 2014, an application requesting approval of the acquisition of control of OrthoNet of the Mid-Atlantic, Inc. by OptumHealth Care Solutions, Inc. (“OptumHealth”), was submitted to the Department; and

WHEREAS, the Merger Agreement between Respondent and OptumHealth, Section 5.12(a) stated, in pertinent part:

Parent [OptumHealth] shall include, and shall cause the Company [OrthoNet Holdings, Inc.] and each of its Subsidiaries [including Respondent] that is a corporation to be included, immediately after the Closing Date, as a member of the Affiliated Group (as determined for U.S. federal income tax purposes) of which Parent is a member, and the Company and each such corporate Subsidiary shall be included in the consolidated U.S. federal income Tax Return filed by such Affiliated Group for the first taxable period (or portion thereof) beginning after the Closing Date.

; and

WHEREAS, on or about December 16, 2014, the Department approved the acquisition of control of OrthoNet of the Mid-Atlantic, Inc. by OptumHealth, but said approval did not address the filing of consolidated federal income tax returns ; and

WHEREAS, the Financial Condition Examination Report of Respondent, filed with the Department on April 17, 2015, contained the results of the examination of Respondent's assets and liabilities, methods of conducting business, and all other affairs thereto, as of December 31, 2013, and noted that pursuant to N.J.S.A. 17:27A-4, Respondent was required to file notice with the Department for prior approval of the intercompany tax agreement with its former parent company effective April 20, 2005 through December 31, 2008, but had not done so; and

WHEREAS, Respondent subsequently submitted the tax sharing agreement with its former parent company to the Department, as required by N.J.S.A. 17:27A-4 and N.J.A.C. 11:1-35.10(a), on June 4, 2010, which was approved on October 4, 2010; and

WHEREAS, on or about December 14, 2015, Respondent submitted a tax allocation agreement with UHG to the Department, which stated a retroactive effective date of December 19, 2014; and

WHEREAS, from December 19, 2014 until the present, Respondent has been a member of UHG's Affiliated Group and has been included in UHG's consolidated federal income tax returns filed for such Affiliated Group for the period beginning on and continuing from December 19, 2014, without having obtained Department approval of a tax sharing agreement between Respondent and UHG; and

WHEREAS, Respondent acknowledges that its filing of a consolidated federal income tax return involved sharing of federal income tax liability with its affiliates prior to its submission of the tax sharing agreement to the Department and the Department's approval of same, in violation of N.J.S.A. 17:27A-4; and

WHEREAS, Respondent has cooperated fully with the investigation conducted by the Department; and

WHEREAS, cause does exist under N.J.S.A. 17:27A-9 to impose a fine; and

WHEREAS, Respondent has waived its right to a hearing on the aforementioned violation and has consented to payment of a fine in the amount of \$35,000.00; and

WHEREAS, this matter should be resolved upon the consent of the parties without resort to a formal hearing on the aforementioned violations, and further good cause appearing; and

NOW, THEREFORE, IT IS on this 30th day of MARCH, 2016:

ORDERED AND AGREED that Respondent shall pay a fine in the amount of \$35,000.00 to the Department; and

IT IS FURTHER ORDERED AND AGREED that said fine shall be paid by wire transfer or certified check, cashier's check or money order made payable to the State of New Jersey, General Treasury, and shall be due and payable immediately upon execution of this Consent Order by Respondent; and

IT IS FURTHER ORDERED AND AGREED that the signed Consent Order together with the fine in the amount of \$35,000.00 shall be remitted to:

New Jersey Department of Banking and Insurance
ATTN: Virgil Downtin, Chief of Investigations
9th Floor – Enforcement Unit
P.O. Box 329
Trenton, New Jersey 08625

IT IS FURTHER ORDERED AND AGREED that the tax allocation agreement submitted to the Department on December 14, 2015 with a retroactive effective date of December 19, 2014 shall be approved by the Department; and

IT IS FURTHER ORDERED AND AGREED that in the event full payment of the fine is not made in accordance with this Order, the Commissioner may exercise any and all remedies available by law, including but not limited to recovery of any unpaid amounts in summary proceedings, in accordance with the penalty enforcement law N.J.S.A. 2A:58-10 et seq.; and

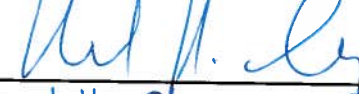
IT IS FURTHER ORDERED AND AGREED that the provisions of this Consent Order represent a final agency decision and constitute a final resolution of the violations contained herein.



Peter L. Hart
Director of Insurance

Consented to as to
Form, Entry, and Content

OrthoNet of the Mid-Atlantic Inc.

by: 

Michael H. Singer, EVP & Secretary
(Print Name and Title)

Date: March 22, 2016