UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

[PUBLIC]

IN THE MATTER OF NORTH TEXAS SPECIALTY PHYSICIANS, A CORPORATION.	Docket No. 9312

EXPEDITED MOTION OF NORTH TEXAS SPECIALTY PHYSICIANS AND SOUTHWEST NEUROLOGICAL ASSOCIATES FOR A PROTECTIVE ORDER AND TO STAY DEPOSITIONS, OR IN THE ALTERNATIVE, MOTION TO QUASH DEPOSITIONS

Pursuant to 16 C.F.R. § 3.31(d), Respondent North Texas Specialty Physicians ("NTSP") moves for a protective order postponing depositions noticed by the FTC until at least ten days after the FTC (a) has answered interrogatories that disclose the specific allegations against NTSP, and (b) has produced the almost five boxes of documents obtained during the pre-complaint investigation, whichever is later. NTSP also moves for a protective order that requires the FTC to schedule depositions on dates and at times and locations that are mutually convenient for all counsel and witnesses, taking into account the fact that many witnesses are physicians who must continue to provide care to their ill patients. In the alternative, pursuant to 16 C.F.R. §3.34(c), NTSP moves to quash the deposition subpoenas issued by the FTC. Finally, Southwest Neurological Associates, PA ("SWNA") moves for a protective order extending its deadline to produce documents in response to the FTC's subpoena.

Because the current schedule contemplates document production by SWNA on Friday, November 14, 2003, and depositions starting at 2:00 p.m. CST on Monday, November 17, 2003, NTSP and SWNA seek expedited consideration of this motion and respectfully requests that the Court issue a ruling no later than Thursday, November 13, 2003. NTSP and SWNA could not have filed this motion sooner because the parties did not reach an impasse until after 5:00 p.m. EST on Monday, November 10, 2003, and

Tuesday, November 11, 2003, was a federal holiday on which NTSP could not file this motion.

I.

Background

Almost fourteen months after starting its pre-complaint investigation, the FTC initiated this adjudicative proceeding on September 16, 2003. The Court issued scheduling and protective orders on October 16, 2003. The parties have exchanged requests for production and initial disclosures, and NTSP has served interrogatories upon the FTC. During its pre-complaint investigation, the FTC also deposed NTSP's executive director and the chairman of its board of directors, and received over 18,000 pages of documents from NTSP. Since the FTC issued the complaint, NTSP has produced an additional 25,230 pages of documents in response to the FTC's requests for production.

The FTC has not been so forthcoming with documents and information in response to NTSP's written discovery requests. In contrast to NTSP's production of over 43,000 pages of documents, the FTC has produced only forty-four pages of documents. Those documents consist of thirteen publicly available articles from newspapers and online publications, a printout from the American Medical Association, and three printouts from various Internet sites.[1] The FTC has not produced any of the almost five boxes of documents it received during its pre-complaint investigation from the fifty third parties who produced documents or information concerning NTSP or payor contracts in the DFW Metroplex.[2] Based on the protective order, Complaint

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1 *See* Complaint Counsel's Initial Disclosures, attached as Exhibit A.

2 *See* Complaint Counsel's Response to Respondent's First Set of Interrogatories, attached as Exhibit B.

Counsel has told NTSP that those documents will not be produced until at least November 17, 2003.[3]

More troubling from NTSP's perspective is the FTC's refusal to answer any contention-type interrogatories until after the close of fact discovery on January 30, 2004, if at all. In other words, the FTC is taking the position that — despite its fourteen-month pre-complaint investigation, receipt of over 43,000 pages of NTSP documents and almost five boxes of third-party documents, and depositions of two NTSP witnesses — the FTC has no obligation to answer interrogatories concerning the specific facts supporting its allegations. NTSP's interrogatories ask the FTC to disclose the facts upon which it bases its contentions (a) that NTSP allegedly conspired with other persons in violation of the antitrust laws, and (b) that NTSP allegedly retrained trade, hindered competition, and engaged in unfair methods of competition.[4] Although this information is clearly relevant, the FTC claims that it has no current duty to provide the information and, in fact, may never have to provide it.[5] The FTC's conduct is prejudicing NTSP's ability to defend itself in this proceeding, because it knows only the general allegations made in the complaint.

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[3] The documents that the FTC has represented it is going to produce in response to NTSP's requests for production are those that are subject to paragraph 3 of the terms and conditions contained in the protective order. Paragraph 3 requires the FTC to provide a copy of the protective order to all parties and third parties from whom the FTC obtained documents during the pre-complaint investigation of NTSP. The order then gives those parties thirty days to determine whether the materials qualify for the higher protection of Restricted Confidential, Attorneys Eyes Only and to so designate those documents. Assuming a copy of the protective order was provided to these parties on the date the protective order was entered, which was October 16, 2003, the first business day after which the thirty-day time period expires is November 17, 2003.

[4] NTSP's motion to compel responses to its interrogatories is currently pending before the Administrative Law Judge. That motion seeks an order compelling the FTC to answer two interrogatories seeking the specific facts upon which the FTC bases its claims.

[5] *See* Complaint Counsel's Objections to Respondent's First Set of Interrogatories, attached as Exhibit C.

Recent actions by the FTC further prejudice NTSP and its ability to defend itself in this proceeding. On November 4, 2003, the FTC noticed the deposition of NTSP's corporate representative and 20 third-party witnesses affiliated with NTSP.[6] On November 6-7, 2003, the FTC issued subpoenas for 14 of these third-party witnesses.[7] The FTC unilaterally scheduled these depositions – without checking on the witnesses' availability and knowing that NTSP's counsel would be unavailable on certain selected dates — for the weeks of November 17, December 1, December 8, and December 15, 2003.[8] The FTC also scheduled the depositions to occur in its Dallas office, even though almost every deponent is in Fort Worth.

NTSP moves for a protective order postponing the commencement of these depositions until at least ten days after the FTC (a) answers NTSP's contention interrogatories, and (b) produces the almost five boxes of third-party documents obtained in its pre-complaint investigation, whichever is later. NTSP also moves for an order that the FTC first try to schedule these depositions on dates and at times and locations that are mutually convenient for all counsel (not just the FTC) and the witnesses, taking into account that many of the witnesses are physicians who must continue to provide care to their ill patients. Absent these protections, NTSP, the witnesses, and the witnesses' patients will all incur undue burden and expense. In the alternative, NTSP seeks a motion quashing the deposition subpoenas noticed by the FTC. Finally, SWNA moves for a protective order extending until November 21, 2003, the deadline to produce documents in response to the FTC's subpoena duces tecum.

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[6] *See* Notice of Deposition, attached as Exhibit D.

[7] The FTC issued subpoenas for the depositions of William Vance, M.D., Jack McCallum, M.D., Doug Myers, M.D., Ira Hollander, M.D., Harry Rosenthal, Jr., M.D., John Nugent, M.D., Mark Presley, M.D., John W. Johnson, M.D., Paul Grant, M.D., Susan K. Blue, M.D., Britton West, M.D., Robert Ruxer, M.D., Mark Collins, M.D., and Thomas Deas, M.D. Counsel for NTSP represents 11 of these deponents.

[8] *See* Exhibit D.

II.

Argument and Authorities

A. The Administrative Law Judge has the authority to set the sequence of discovery.

Although the frequency and sequence of the discovery methods allowed by the FTC Rules of Practice for Adjudicative Proceedings is not limited, the Administrative Law Judge has the authority to order otherwise.[9] The Administrative Law Judge also has the authority to "deny discovery or make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense."[10]

B. The FTC is unfairly and prejudicially withholding relevant and responsive information.

Despite NTSP's efforts to discover the specific facts underlying the FTC's allegations, the FTC has stonewalled NTSP by objecting and refusing to answer NTSP's contention interrogatories. Although the FTC conducted a fourteen-month pre-complaint investigation and has received tens of thousands of pages of documents from NTSP and others, the FTC refuses to answer any interrogatory that would allow NTSP to gain knowledge regarding the specific facts that form the basis of the complaint's general allegations.

Furthermore, although the FTC is willing to produce the third-party documents obtained during the pre-complaint investigation, it will not do so until at least November 17, 2003. Nevertheless, the FTC wants to start deposing persons affiliated with NTSP on November 17, 2003 — the first possible date that NTSP could receive the FTC's documents. Because the FTC may use in those depositions some of the third-party documents, and because neither NTSP nor the witnesses will be able to review those documents before the depositions, the FTC will obtain

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[9] FTC Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.31(a).

[10] FTC Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.31(d).

an unfair advantage that is prejudicial to NTSP and the witnesses. The FTC can essentially ambush NTSP and the witness by asking questions about documents that neither NTSP nor the witnesses have ever seen or reviewed. This potential for prejudice, oppression, and harassment entitles NTSP to a protective order postponing the depositions until after the FTC answers NTSP's contention interrogatories and produces documents.

C. The FTC has noticed several depositions for dates on which it knew that NTSP's lawyers were unavailable and on which the deponents themselves are unavailable for deposition.

On October 30, 2003, the parties' lawyers participated in a conference call during which the FTC raised the topic of depositions. The FTC said it wanted to begin scheduling depositions and would discuss the deponents and the scheduling of the depositions during a conference call scheduled for November 6, 2003. After the October 30 conference call, however, the FTC apparently decided that any further discussion was unnecessary, because Complaint Counsel sent an e-mail providing dates on which it intended to notice depositions.[11] Then, on November 4, 2003, the FTC formally noticed the depositions of an NTSP corporate representative and twenty other persons.[12] On November 6-7, 2003, the FTC then issued subpoenas for the depositions of 14 of these third-party witnesses.

When the FTC noticed these depositions, it knew that NTSP's two lead lawyers were unavailable at certain times during which the FTC had noticed depositions. During the October 30 conference call, NTSP's counsel had told Complaint Counsel that he was going to be in an arbitration during the entire week of December 8, 2003, and that NTSP's lead lawyer was currently in a trial that would last until at least mid-December. Despite this discussion, the FTC

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[11] *See* E-mail from Michael J. Bloom to William M. Katz, Jr. dated October 30, 2003, attached as Exhibit E.

[12] *See* Exhibit D.

picked dates for depositions when it knew NTSP's lawyers would be unavailable. This fact provides further support for the issuance of a protective order.

Furthermore, because the FTC did not attempt to consult with any of the third-party witnesses regarding dates for their depositions, depositions are scheduled for certain dates on which deponents are unavailable. For instance, Dr. Jack McCallum, who was noticed for November 20-21, 2003, is scheduled to leave the country on November 21. As a result, he is unable to sit for his deposition on the date for which it is scheduled.

D. The FTC's deposition schedule will harm patient care.

Fifteen of the twenty persons noticed for deposition by the FTC are practicing physicians, each of whom has significant time commitments to patients. If the physicians are required to sit for depositions on the dates and at the times and locations noticed by the FTC, the physicians' patients will be adversely affected and patient care will suffer. The physicians will have to cancel appointments with their patients, regardless of their illness, or force their patients to see other physicians on short notice — a difficult prospect, at best. The Court should enter a protective order that forces the FTC to schedule depositions on dates and at times and locations that will minimize any adverse effects on patient care. One way to do this is to conduct the depositions in Fort Worth, rather than Dallas, and start depositions in the mid-to-late afternoon time period, to allow the physicians to see patients and perform procedures earlier in the day.

E. The FTC has adequate time to complete the depositions before fact discovery closes.

Fact discovery does not close until January 30, 2004. Assuming the FTC produces the documents it has on November 17, 2003 and answers NTSP's contention interrogatories around that same time, the depositions should start by mid-December — keeping in mind that NTSP will need some time to review the documents and interrogatories and that NTSP's two senior

lawyers are both unavailable during the week of December 8. Conducting the depositions after sufficient written discovery is conducted will not prejudice the FTC or delay this proceeding. It merely allows NTSP to properly defend itself against the FTC's allegations and to participate in this proceeding on equal terms with the FTC.

F. The Court should extend SWNA's deadline to respond to the FTC's subpoena.

On October 31, 2003, the FTC issued subpoenas to a number of third-parties, including SWNA. Those subpoenas, however, were sent without a copy of the protective order and were, in two instances, served upon the wrong third-parties. As a result, the FTC reissued its subpoenas on November 6, 2003 and served them via registered mail. The deadline on all but two of those subpoenas was November 21, 2003. One of the subpoenas that had a shorter deadline was served upon SWNA. It has a response deadline of November 14, 2003.

SWNA is a small organization, without the resources necessary to respond to a subpoena requesting hundreds of pages of documents on just eight days notice. Each of its physicians treat patients during the day. And each of its employees is engaged in a supporting role for the provision of medical care and would be required to take a substantial amount of time away from assisting with the treatment of patients if they were required to respond within such an unreasonable deadline. Although SWNA intends to fully and completely respond to the subpoena, as best it can, it needs additional time to do so. Therefore, SWNA seeks an order extending the deadline for it to respond to the FTC's subpoena until November 21, 2003, the same date that was provided to the other third-parties who were issued subpoenas.

III.

Conclusion

The depositions noticed by the FTC are unworkable and prejudice NTSP by forcing it to participate in depositions without a full picture of the specific allegations against it. In effect, the FTC wants to force NTSP to participate in depositions before it receives any substantive documents. This is unfair, prejudicial, and harassing. NTSP should not be forced to defend itself in a vacuum. And the scheduling order allows for more than enough time to complete the depositions at issue. There is no need to rush forward with depositions that will adversely impact patient care.

For all these reasons, NTSP requests that the Administrative Law Judge do the following:

(a) consider this motion on an expedited basis;

(b) grant this motion for protective order;

(c) order that all depositions by the FTC are postponed until at least ten days after the FTC (i) has answered NTSP's contention interrogatories, and (ii) has produced the almost five boxes of third-party documents obtained during the pre-complaint investigation, whichever is later;

(d) order that the FTC must schedule depositions on dates and at times and locations that are mutually convenient for all counsel and witnesses, taking into account the fact that many of witnesses are physicians who must continue to provide care to their ill patients;

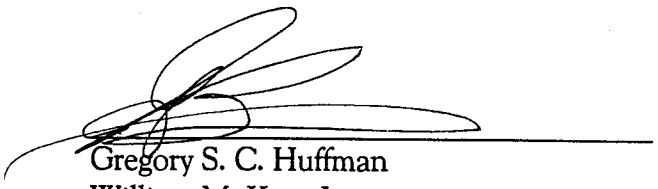
(e) order that SWNA's deadline to respond to the FTC's subpoena is extended until November 21, 2003;

(f) due to the immediacy of the depositions that are scheduled, order that the response time for the FTC to respond to this motion be shortened appropriately so that a hearing may be no later than this Friday;

(g) in the alternative, quash the deposition subpoenas issued by the FTC; and

(h) grant such other and further relief to which NTSP may be justly entitled.

Respectfully submitted,



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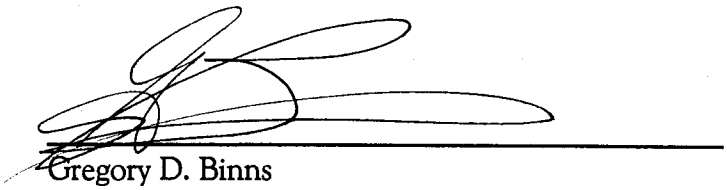
CERTIFICATE OF CONFERENCE

Counsel for Respondent North Texas Specialty Physicians has conferred with Complaint Counsel in an effort in good faith to resolve by agreement the issues raised by this motion and has been unable to reach such an agreement. This conference was conducted on November 10, 2003 at approximately 4:00 p.m. EST and did not conclude until after 5:00 p.m. EST. The counsel conferring were William M. Katz, Jr., on behalf of Respondent North Texas Specialty Physicians, and Michael Bloom, on behalf of Complaint Counsel.



Gregory D. Binns

CERTIFICATE OF SERVICE

I, Gregory D. Binns, hereby certify that on November 11, 2003, I caused a copy of the foregoing document to be served upon the following persons:

Michael Bloom (via e-mail and Federal Express)
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and by e-mail upon the following: Susan Raitt (sraitt@ftc.gov), and Jonathan Platt (jplatt@ftc.gov).

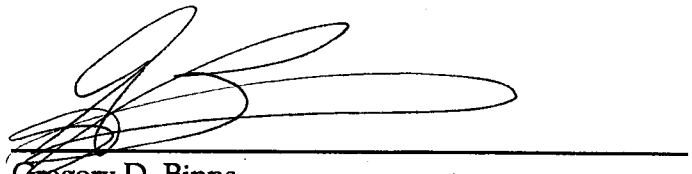

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EXHIBIT A

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of NORTH TEXAS SPECIALTY PHYSICIANS, a corporation.	**DOCKET NO. 9312**

COMPLAINT COUNSEL'S INITIAL DISCLOSURES

Pursuant to § 3.31(b)(1) and (2) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, complaint counsel hereby submits its initial disclosures to respondent, North Texas Specialty Physicians. Set forth below are the names of individuals likely to have discoverable information relevant to the allegations asserted in the complaint, to the proposed relief, or to the defenses raised in the respondent's answer. In addition complaint counsel will, consistent with the terms of any protective order, provide copies of third-party documents relevant to the allegations in this matter, the proposed relief, or to the defenses raised in the answer, and other documents except for those documents covered by § 3.31 (c)(2)-(4) of the Rules of Practice.

I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION

The following individuals are likely to have discoverable information relevant to the allegations in this matter, the proposed relief, or defenses raised in the answer. Where available, complaint counsel has set forth each individual's full name, employer or company affiliation, address, and telephone number. At least the following organizations are represented by counsel: Cigna, Aetna, Inc., Blue Cross/Blue Shield, Humana Inc., Heath Texas Provider Network ("HTPN"), Pacificare, System Health Providers ("SHP"), Southwest Physicians Association ("SPA"), Great-West Life & Annuity Insurance Company, Accountable Health Plans of America, Inc., Unicare Inc. and United Health Care of Texas Inc. Names of counsel for these entities are provided herein. Complaint counsel is not disclosing the identity of any non-testifying experts pursuant to the protection from disclosure provided in § 3.31(c)(3) and (4) of the Rules. Complaint counsel will disclose the identity of its testifying experts on the date provided in the Scheduling Order entered by the Administrative Law Judge. Finally, complaint counsel is not identifying any persons who were identified to complaint counsel by respondents or their counsel during the course of the pre-complaint investigation.

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77. Maureen Redman
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II. RELEVANT DOCUMENTS

The attached documents are being submitted as complaint counsel's initial disclosure. As noted above, complaint counsel will, consistent with the terms of any protective order, provide copies of third-party documents relevant to the allegations in this matter, the proposed relief, or to the defenses raised in the answer. Complaint counsel is not producing documents that respondent submitted to Commission staff during the investigation of this matter or those documents covered by § 3.31 (c)(2)-(4) of the Rules of Practice. Complaint counsel notes that it previously provided respondent with copies of the investigational hearing transcripts for Karen Van Wagner and Thomas Deas Jr.

Respectfully submitted,

Jonathan Platt
Complaint Counsel
Northeast Region
Federal Trade Commission
1 Bowling Green, Suite318
New York, NY 10004

Dated: October 16, 2003

CERTIFICATE OF SERVICE

I, Jonathan Platt, hereby certify that on October 16, 2003, I caused a copy of Complaint Counsel's Initial Disclosures to be served upon the following person by email and by first class mail:

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Jonathan Platt

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Fort Worth Star-Telegram (Texas)

July 9, 1998, Thursday FINAL AM EDITION

SECTION: BUSINESS; Pg. 2

LENGTH: 557 words

HEADLINE: Doctors' group to cancel contract with Aetna HMO

BYLINE: Jim Fuquay, Star-Telegram Writer

BODY:

A large Dallas physicians' group said yesterday that it intends to terminate its contract with Aetna/U.S. Healthcare's HMO, a move the insurer says could sever all its contracts with the group.

Genesis Physicians Practice Association, which has only one Tarrant County member, represents 562 doctors who contract with the Aetna HMO. They treat about 8,000 of the Aetna HMO's members, mostly in north Dallas and Collin County (Plano).

The group said that its contract with Aetna places its doctors at financial risk for patient services and prescription drugs and that Aetna has failed "to provide timely business and financial information" to the doctors. Genesis Physicians also said Aetna has refused to let the group manage the utilization of medical services by the group's patients, which the doctors called "a process essential to providing high-quality, cost-effective patient care. "

Aetna said in a statement yesterday that it provides the group "with the majority of the information that they have requested" and is working to provide additional data. Regarding utilization management, the insurer said Genesis Physicians group "has not demonstrated to Aetna/U.S. Healthcare the capacity to satisfactorily perform these obligations. "
As large physician groups have increasingly signed insurance contracts that put them at financial risk, they have often taken on additional administrative chores, such as billing and utilization management.

Malinda Sullivan, chief executive of System Health Providers, which manages Genesis Physicians, said the group has those powers under contracts with several other North Texas insurers.

Aetna said it is asking Genesis Physicians to keep seeing its HMO members until Oct. 10 if the HMO contract is canceled. In the meantime, it said, it will seek to contract directly with individual Genesis Physicians group members if the group cancels its HMO contract.

Although the physicians' group said it feared it could be dropped from all of Aetna's insurance products as a result of the dispute,

Aetna said its customers in other insurance plans are not affected.

Aetna, which insures the medical expenses of approximately 300,000 people in North Texas, has tried in the past year to require physicians to contract with all its insurance products, or none of them. Since the merger last year of Aetna and U.S. Healthcare, the insurer has aggressively pushed for new contracts with physicians and hospitals.

Dr. Robert Gunby Jr., president of the Dallas County Medical Society, called Aetna's practices "yet another business practice by a giant HMO designed to bully patients and physicians into submission. "

In Tarrant County, Aetna has sought to renegotiate an existing contract through Harris Select, a large contracting service, but the move has been resisted.

Dr. Don Johnson, a leader in the Specialty NET specialists group in Northeast Tarrant County that does not contract through Harris Select, said his group dropped out of Aetna in November. He said the insurer's reimbursements and service were unacceptable.

An affiliated group, Specialty Net of Arlington, recently renegotiated a contract with Aetna through Arlington Memorial Hospital, Johnson said.

Jim Fuquay, (817) 390-7723 jfuquay@star-telegram.com

LOAD-DATE: July 10, 1998

1 of 9 DOCUMENTS

Fort Worth Star-Telegram (Texas)

November 26, 1999, Friday FINAL EDITION

SECTION: NEWS; Pg. 1

LENGTH: 1825 words

HEADLINE: Buyout of HMO worries doctors Several say they may not join PacifiCare deal

BYLINE: Sarah Lunday;Mitchell Schnurman, Star-Telegram Writer

BODY:

PacifiCare Health Systems is running into resistance from physicians over its pending purchase of Harris Methodist Health Plan.

Several doctors say they might not sign PacifiCare's contracts, citing the company's record of aggressively controlling costs and its policy of shifting financial risks to doctors.

The doctors say they are concerned that the care of patients could suffer. Health care analysts also note that the changes could affect the physicians' pocketbooks.

"We're very nervous about the sale," said Chip Robinson, executive director of Physicians Services Organization, which represents 95 doctors in North Texas. "We have a lot of revenue tied up with Harris. "

It is impossible to gauge now how many doctors will sign PacifiCare contracts. But if the opposition is widespread, thousands of Harris members could see their care disrupted as early as next year, after PacifiCare completes its purchase.

PacifiCare said it does not expect a large fallout. It intends to offer contracts to most of the 5,400 doctors working with the Harris plan, and it hopes to retain as many Harris members as possible. A few doctors have already said they expect to sign a contract.

But if a doctor declines a contract, his or her Harris patients must change health plans or find another doctor who works with PacifiCare.

One group of Plano pediatricians has already sent a letter to its Harris members, saying it will not join PacifiCare's network and urging patients to switch health plans during the current insurance enrollment period.

To PacifiCare, the reaction seems overblown, and its top executive suggested that doctors may be trying to gain leverage for negotiations.

"I think there's a lot of posturing and, to a certain extent,

overreacting," said Pat Feyen, chief executive of PacifiCare of Texas.

But others are taking the doctors' warnings seriously. Last week, two agencies lowered the ratings assigned to PacifiCare's debt, citing concerns about the Harris acquisition.

"The company faces numerous challenges turning around this troubled plan," Moody's Investors Service said.

In the competitive North Texas market, it added, "Moody's believes relationships between health care providers and managed-care companies have been particularly strained. "

Feyen brushed off the assessment, and also the difficulty he could face in converting Harris doctors to PacifiCare's way of life.

"That's why I'm in this industry," he said. "I like challenges. "

Harris, which has been the dominant health maintenance organization in Tarrant County, has lost money for most of the '90s. PacifiCare's turnaround plan calls for major changes, including trimming doctor expenses.

Feyen said he believes that most of Harris' members will continue to have access to their doctors after the deal.

Analysts said they believe that most doctors will ultimately sign on because Harris members account for so much of their business.

Even if some doctors opt out, many members will simply switch physicians rather than choose other coverage that costs more, the analysts added.

Feyen conceded that there will be some disruption. But he also noted that health plans and patients often face changes for more mundane reasons, such as doctor retirements and relocations.

One major local employer has responded to the uncertainty by extending its annual enrollment period. Lockheed Martin Tactical Aircraft Systems, which has 10,500 employees, wants to give workers a chance to talk to their doctors before they sign up for a health plan for next year.

"We're concerned with the overall quality of care, and the doctors are certainly part of that," said Kathryn Hayden, a Lockheed Martin spokeswoman.

Harris has nearly 310,000 members in its primary health maintenance organizations. An additional 60,000 are in Harris' preferred provider organizations, which have fewer restrictions on physicians but tend to cost patients more.

PacifiCare is now one of the smallest companies operating in the area, with 50,000 members, most of them in the Dallas area.

One key difference between Harris and PacifiCare is its formulary, or the list of drugs that the company will pay for in treating patients. The two health plans use different lists.

For instance, unlike Harris, PacifiCare does not pay for the anti-depressant Prozac or for Lipitor, a cholesterol-lowering

he is suspicious when doctors start talking about preserving the quality of care.

"It's all about money for the docs," Woodard said. "They can talk about fee schedules and reimbursement limits, but in the end, 90 percent of the complaining is about money. "

But Robin Sloane, executive director of the Tarrant County Medical Society, which represents 2,300 doctors, said doctors need to consider how reimbursements will affect the care they give.

"When you can't make money, you have to cut your expenses, and your expenses are your very staff who support the services to patients," Sloane said.

Cowan, the opthalmologist, is a member of Medical Pathway's finance committee. He said he has heard several doctors say they "really, really don't want to sign the [PacifiCare] contract. "

Cowan said he is unsure whether he will join the network, though he added that he was not speaking as a Medical Pathways representative.

"It's pretty clear that you're going to be paid less than you were through the Harris contracts," he said.

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LOAD-DATE: December 14, 1999

medication. Instead, its formulary includes other drugs to treat the same ailments.

Another distinction, more obvious to doctors than to patients, involves PacifiCare's payment system. PacifiCare uses an approach known as capitation. In most of its contracts, PacifiCare pays doctors a monthly fee for each member and lets the physicians manage all the medical spending, including paying for visits to specialists.

Harris also offers capitation contracts, but it is considered less aggressive than PacifiCare in pushing them. With Harris, doctors say they believe they have more leeway to pick a fee-for-service option.

Doctors say a shift in payment to PacifiCare's is likely to reduce their incomes.

And they said it can hurt patient care, too, because the approach discourages referrals to specialists and forces physicians to spend more time on paperwork and financial management.

PacifiCare was one of five HMOs named in class-action lawsuits filed late Monday in federal court in Hattiesburg, Miss., by a consortium of lawyers. The lawsuits accuse PacifiCare, Foundation Health, CIGNA Healthcare, Prudential and Humana of violating their responsibilities to their members and violating federal laws governing health plans.

Dr. Don Johnston, an orthopedic surgeon and president of Specialty Net physicians group, said PacifiCare's contracts cost doctors time and money. He said doctors are looking at PacifiCare with "a jaundiced eye. "

"The doctors shouldn't manage the money," said Johnston, who has talked to many of the 90 doctors in his group. "We weren't trained to manage money. "

Dr. Gary Cowan, a Fort Worth ophthalmologist, has not decided whether to join the new network. But he said he is wary.

"Mama didn't put me on this Earth to make money for PacifiCare," he said. "And they're in business to make money. "

Feyen said PacifiCare's approach encourages doctors to be proactive about preventive medicine and provides an incentive to treat illnesses quickly.

Louis Robichaux, a health care consultant for PricewaterhouseCoopers in Dallas, said most physician groups "are ill-prepared to handle the risks" of capitation deals that include specialists' costs.

Yet PacifiCare continues to prefer the model in which the primary care physicians and specialists are paid one lump sum. And some doctor groups say they are willing to take on the financial responsibilities.

PacifiCare recently signed that kind of deal with Medical Pathways, which represents 1,600 physicians in contract

negotiations with managed-care companies. Under the contract, the doctors would share the financial responsibility for prescription
drugs and hospital fees.

The doctors in that group must now decide individually whether to accept the negotiated contract for themselves.

The doctors are expected to get a look at the proposed contracts in December. Fred Miller, the chief financial officer for the company, said the contract will be beneficial for the doctors.

"The physician leaders of our group are all practicing physicians, and I would assume they wouldn't sign a contract that they believe to be detrimental to their practices," he said.

PacifiCare said it recently began taking steps to identify other doctor groups that could handle its approach. Feyen said PacifiCare looks for strong physician leadership, administration and information systems before adding a group to its network.

"We have a much more extensive precontractual assessment," Feyen said. "If we don't believe they can be successful then we won't go forward. "

PacifiCare, based in Santa Ana, Calif., has been in North Texas for five years but remains a small player. Its area membership has declined 14 percent in the past year.

In addition, 25.6 percent of PacifiCare's doctors opted out of the North Texas network last year, the highest turnover rate among the state's HMOs, according to a report by the Texas Health Care Information Council. At Harris, last year's doctor turnover rate was 4.3 percent.

The report does not cite reasons for the high turnover. Feyen attributed much of it to doctor groups that declared bankruptcy and broke their contracts with PacifiCare.

Local doctors say that reflects the risks that accompany an approach like PacifiCare's.

But Dr. Alan Lassiter, president of Cook Children's Physician Network, said his group has experience with capitation, so it does not have the same reservations about the system.

The Cook network, a group of more than 200 employed and contracted physicians, already has capitation contracts with the Harris health plan and several Medicaid plans.

Lassiter, a pediatrician, said the contracts have worked well because the group has been able to control costs, especially hospital charges. Its doctors primarily work at the hospital where their patients are treated, Cook Children's Medical Center.

Blake Woodard, who sells insurance plans, including Harris, also countered some of the concerns and urged doctors to give PacifiCare a chance. He said supporting PacifiCare would help preserve competition in the managed-care market.

Woodard, a partner at Woodard Insurance in Fort Worth, also said

4 of 9 DOCUMENTS

Fort Worth Star-Telegram (Texas)

September 17, 1998, Thursday FINAL AM EDITION

SECTION: BUSINESS; Pg. 1

LENGTH: 831 words

HEADLINE: New HMO contracts reduce physician fees;
Harris Methodist pact sent to 6,000 N. Texas doctors

BYLINE: Sarah Lunday, Star-Telegram Writer

BODY:

FORT WORTH - The Harris Methodist Health Plan, which agreed to rewrite its contracts with physicians to settle state objections, has added a twist to the new pacts: Most physicians are facing fee cuts.

The rewritten contracts are part of a $3.4 million August settlement with the Texas Department of Insurance, which alleged that the old contracts violated state law by offering financial incentives to limit medically necessary care.

Physicians and group administrators say that under the proposed contracts, most primary care physicians and certain specialists would see a fee decrease. Harris began delivering the documents two weeks ago to the physicians, who have until Nov. 1 to decide whether to accept the terms.

Doug Hawthorne, chief executive of the plan's parent Texas Health Resources, declined to discuss specific fees. But he said the negotiations have been a "very open process. "

"We're feeling very good about the process we've just gotten started," he said. "We feel they doctors realize these changes need to be made. "

At a Tarrant County Medical Society meeting last night, doctors voiced anger about the Harris plan. "The basic solution is we all tell them to take a flying leap and go bankrupt yourself," said Christa Mars, a general surgeon. "We're taking care of people for nothing. "

Texas Medical Association attorneys told doctors to watch the health plan's profit margins.

Harris representatives said the plan projects to lose about $50 million this year before premium increases.

Harris is the largest health maintenance organization in Tarrant County; it provides care for more than 310,000 members in North Texas. The pacts are being sent to about 6,000 doctors who treat patients in Tarrant and Dallas counties.

At the same time Harris hopes to decrease some fees, it is trying

to raise the premiums it charges employers for coverage. That's because the Harris plan has been struggling financially, reporting losses of $17 million for the first six months of this year.

The proposed contract indicates that the premium rates that doctors' fees are based on are expected to rise to about $127 per member per month, from a range of $118 to $121.

But primary care physicians and administrators say their percentage of reimbursement from the premiums is to decline to about 10 percent or 11 percent, from 12.8 percent.

As an offset, the doctors will no longer face fines for exceeding a pharmaceutical budget, removing a contract provision that the insurance department found objectionable.

Many specialists will also see a dramatic decrease in reimbursements.

"They're trying to cut fees," said Dr. Don Johnston, president of the Specialty Net physician group, a group of 94 physicians that refers most of its patients to Harris Methodist H.E.B. and contracts only with Harris. "And for the guys that are not in a chosen group, they're not survivable fees. They don't pay overhead. "

Some cardiologists and surgeons will see a cut of more than 13 percent with the new contracts, Johnston said.

The current negotiations, he said, are reminiscent of the 1995 contract wars between Harris and physicians. Thousands of physicians threatened to drop Harris when it slashed specialists' fees.

Several doctors also expressed skepticism about the new contracts, citing language in a memo they received from Harris. The memo implies that the Insurance Department approved the fees.

But the department said yesterday that it has not approved fee schedules for Harris. Instead, it merely ensured that the doctors were not financially at risk for overspending budgets.

"The rates have not even been reviewed, and that's something we do not normally do," said Lee Jones, an Insurance Department spokesman.

Physicians say the implications of the 30-to 40-page contracts and the fee changes are widespread. Because Harris is the largest HMO in Northeast Texas, the doctors find it hard to turn down contracts from the plan because it controls the patient base in Tarrant County.

"If it wasn't for that, we'd probably not sign up," said Adrian Ballom, administrator of Neighborhood Medical Clinic in Fort Worth.

The two-doctor clinic cares for about 400 patients in the Harris plan.

Dr. Raymond LeBlanc, president of the Tarrant County Medical Society, said, "There really is a lot of concern among the physician community that they have few places to turn at a time like this. "

The consent order with the Insurance Department was signed last month. In a related settlement of a suit filed by a group of physicians, Harris has agreed to pay the physicians about $475,000.

A federal lawsuit filed in May by several members of the Harris

HMO is continuing and has been certified as a class action. Harris has filed a motion to dismiss the case, which is being handled in federal court in Texarkana.

Sarah Lunday, (817) 390-7064

LOAD-DATE: September 18, 1998

7 of 9 DOCUMENTS

Fort Worth Star-Telegram (Texas)

November 18, 1997, Tuesday FINAL AM EDITION

SECTION: BUSINESS; Pg. 2

LENGTH: 531 words

HEADLINE: 75 Northeast Tarrant doctors pull out of Aetna U.S. Healthcare

BYLINE: STEPHEN G. MICHAUD, Star-Telegram Writer

BODY:

In what may be the first substantive physician defection from Tarrant County's largest health insurance network, 75 Northeast Tarrant specialists say they are bolting Aetna U.S. Healthcare on Saturday.

"Money's involved with all of this," said Dr. Don Johnston, an orthopedic surgeon in Euless who heads the doctor group Specialty NET, P.A.

"I'd be less than candid if I said it wasn't. But there are quality of care issues here, too. "

Aetna U.S. Healthcare is a unit of Aetna Inc. and was formed out of a reported $8.9 billion merger last year with U.S. Healthcare.

The newly combined company recently broke ground on a $20 million claim-processing center near Matlock Road and Interstate 20 in Arlington.

Johnston says fee cuts Aetna proposed in the spring would reduce his reimbursements by as much as 40 percent for many of his commonly performed procedures.

One of the most dramatic fee reductions, Johnston said, was for a back surgery called a laminectomy, for which a surgeon in 1990 received up to $4,000 but may now receive as little as $1,200 from the insurer, Johnston said.

"Enough is enough," he said. "We're all small-business men. "

On a dollar basis, Aetna reimbursements represent up to 10 percent of his group's gross income, Johnston said.

Kelli Brady, a spokeswoman for Aetna, downplayed the size of the proposed reimbursement cuts.

"There were a few reductions," Brady said.

She added that the doctors chose to break off negotiations last week, rather than explore other avenues with Aetna as other doctor groups have.

"They opted not to choose any other plans," Brady said.

Aetna, which has about 600,000 members in North Texas and 23 million nationwide, was threatened with a similar walkout in September over the same issues by members of Dallas-based Southwest Physician Associates.

After negotiations, a "majority" of the approximately 750 affected physicians elected to stay with the plan, Brady said.

Seven of 16 doctors belonging to the Arlington Physicians Group dropped out of the Aetna system Nov. 1, said Chip Robinson, the group's executive director. Two more plan to leave Jan. 1, Robinson said.

The primary issue, once again, was reimbursement cuts, Robinson said.

Johnston said another factor in his group's decision to leave Aetna was interference with his work.

"I think they're under the impression that we're doing things we aren't supposed to be doing," Johnston said.

The orthopedist offered as an example the 20 minutes his office manager recently spent securing insurance pre-certification for a knee splint.

"Many of the managed-care organizations micromanage so heavily that it's hard to get your work done," he said.

Members of Specialty NET are the majority of specialists practicing in Northeast Tarrant County in such fields as neurosurgery, urology, nephrology and podiatry, Johnston said.

Brady said 1,107 Tarrant County specialists remain in the Aetna network.

Despite its Saturday deadline, Specialty NET will continue to see Aetna-insured patients until they can find new doctors but will not accept new patients insured by Aetna, Johnston said.

LOAD-DATE: November 19, 1997

6 of 9 DOCUMENTS

Fort Worth Star-Telegram (Texas)

November 25, 1997, Tuesday ARLINGTON AM EDITION

SECTION: ARLINGTON; Pg. 1

LENGTH: 469 words

HEADLINE: Some doctors depart Aetna;
Arlington group has also defected

BYLINE: STEPHEN G. MICHAUD, Star-Telegram Writer

BODY:

Members of a group of Northeast Tarrant County medical specialists say they've made good on their threat and left the Aetna U.S. Healthcare network during the weekend in a dispute over the company's proposed fee reductions and other problems.

Yesterday, the head of a group of Arlington specialists said most of his members left Aetna, too.

Mike Dobbs, general manager at the Aetna U.S. Healthcare office in Irving, described the defections so far as minimal and took issue with doctor contends that Aetna was slashing its fee schedule.

"There have been some cuts, but they are not Draconian," Dobbs said.

The 75 members of Northeast Tarrant-based Specialty NET P.A. stopped accepting new Aetna-insured patients (except for emergencies) at midnight Saturday, said the group's president, Don Johnston, an orthopedic surgeon in Euless.

"Some of my patients were pretty upset about it," said Johnston, who described the decision as "a first step" in resisting fee reductions imposed by all health-maintenance and preferred-provider organizations (HMOs and PPOs), not just Aetna.

The doctors also object to what they call Aetna's onerous "micromanagement" of its local network, Johnston said.

Johnston said about 20 of the 200 patients in his care were affected.

In Arlington, Mike Mycoskie, an orthopedist, said that 50 to 100 doctors belonging to Specialty Net of Arlington, I.P.A., have individually severed their ties to Aetna because of the same issues.

Mycoskie, president of the group that was formed in August, said he and the 12 other members of Arlington Orthopedic Associates have notified Aetna of their plans to withdraw Monday.

Seven of 16 doctors in the smaller Arlington Physicians Group left Aetna on Nov. 1.

Specialty NET's doctors apparently are the first in the Metroplex to desert Aetna as a group. But some Dallas doctors appeared annoyed with Aetna, too.

Writing in the November issue of Dallas County Medical Journal, Dr. Roland E. Black, president of Dallas County Medical Society, describes an unnamed otolaryngologist who spent five weeks getting Aetna to pre-approve a tonsillectomy.

"Well, the physician went postal," said Black, who titled his piece, Aetna, I'm Sorry I Met Ya.

About 1,100 Tarrant County specialists and 500 to 600 primary care physicians are in the Aetna network, Aetna's Dobbs said.

According to a statewide survey that the Texas Medical Association conducted in 1996, 88 percent of Texas' doctors participate in HMOs or PPOs, up from about 73 percent in 1994.

Dobbs said Aetna has added a net total of 310 specialists and 40 primary care physicians to its Metroplex network so far this year, a 25 percent increase.

The announced defections are within the normal range of expected specialist turnover, he said.

LOAD-DATE: November 26, 1997

Business

Posted on Sun, Sep. 28, 2003 Star-Telegram

FTC splits hairs and misses the big picture

By Mitchell Schnurman
Star-Telegram Staff Writer

As we learned with lyin' CEOs and cheatin' mutual funds, it's good to have government watchdogs keep an eye on things, even if they're late to the party.

But the newest scandal sounds like a stretch: price-fixing doctors in Tarrant County?

That's the charge the Federal Trade Commission has levied against North Texas Specialty Physicians, 600 doctors who team up to handle insurance contracts, medical claims and other paperwork.

The laws for these independent physicians associations, or IPAs, split a lot of hairs, and the complaint may well be technically true.

More important, in my view, is that the Fort Worth group does much more good than harm, and the details of the apparent violation seem petty compared with its performance.

Plenty of IPAs have failed in the Metroplex, costing doctors millions in lost fees. NTSP was started in 1995, and it's been a good model for how the groups can benefit the larger health care system.

They help doctors manage medical costs and free them to concentrate on taking care of people, rather than scouring legal documents.

Besides, doctors aren't even the reason for today's soaring health care costs. Insurers and hospitals have the real pricing power these days, after years of consolidation, and they've been wielding it aggressively.

I'm not arguing that independent docs should be allowed to unionize; that would go too far. But they ought to have enough legal leeway to go *mano a mano* with the health care heavyweights.

Instead, the FTC is going after IPAs across the country, perhaps because they're easier targets than billion-dollar insurance companies and hospital chains.

What's shocking about this case is that the Fort Worth group plans to fight back.

The FTC has taken enforcement actions against at least 50 doctors groups, according to the American Medical Association, and NTSP is just the second to refuse to settle.

"We must defend our right to refuse being a party to someone else's contract," the IPA said in a statement, its only public comment.

Docs elsewhere had the same impulse to fight the charges, believing that they'd done the right thing all along. But they wouldn't take on the legal costs just on principle.

Some recent case law is on NTSP's side, and the AMA has been pushing for changes in Washington, so maybe the timing is right.

The nonprofit group is governed by doctors and owned by doctors, and some of the FTC demands went too far, in its view. Near the top of the list: Holding its tongue about contracts that don't meet some minimum standards.

That directive goes to the heart of what the group ought to be doing -- having its professionals comb through insurance contracts and weigh in on the merits of the deals.

The FTC says that IPAs can perform that function; they just can't cross the line into negotiating. Then it becomes collective bargaining, a union practice prohibited for independent doctors.

If NTSP settled with the government, it says it would have to simply pass along the insurers' offers, without comment, and let each physician decide whether to accept them.

A government attorney says the IPA could provide objective advice, as long as it didn't steer physicians one way or the other.

The FTC calls this the "messenger model," because the physician group serves as messenger, not negotiator, opinion-maker or decision-maker.

The FTC says the Fort Worth group went further than most. It polled its members about the minimum payments they'd accept from insurers, and then relayed the bottom line to the companies.

That sounds like a good idea to me, a way to weed out contracts that aren't worth the doctors' time to evaluate. But the FTC says it crossed a bright line.

"In the final analysis, it's tantamount to price-fixing," said Michael Bloom, a senior attorney for the FTC in New York.

An acceptable approach would have been to report on the minimum payments that had been received in past years. That would make the data historical rather than prospective, Bloom said.

See the difference?

It seems a fine point to me -- not enough to justify a federal lawsuit. And it doesn't seem severe enough to require the firm to terminate nearly two dozen insurance contracts and have docs start reviewing new ones.

Couldn't the FTC just whisper in somebody's ear and ask the group to be more careful next time?

A year ago, the general counsel of the California Medical Association urged the FTC to reconsider the entire messenger model. She called it an invention worthy of Rube Goldberg, the inventor of wacky contraptions.

"It is purely a device for maintaining antitrust compliance, with no independent business justification," Catherine Hanson said.

From the government's perspective, there's the threat of a slippery slope. In theory, an unleashed IPA could hold a community hostage and demand ever-rising payments for its doctors.

But in reality, most groups are trying to just hold their own against the bigfoots in the marketplace. Since the mid-1990s, insurers and hospitals have gobbled up hundreds of competitors, giving them the upper hand in contract negotiations.

A recent study by PriceWaterhouseCoopers found that rising provider costs accounted for almost one-fifth of the recent run-up in health care spending. It cited higher hospital rates -- not rising doctor salaries -- as the main culprit.

Insurers have also been raising premiums by double-digit rates. PacifiCare, one of the country's largest HMO operators, recently said that it increased premiums by 18 percent in the past year.

By contrast, NTSP says that reimbursement rates for its doctors have not gone up since 1997.

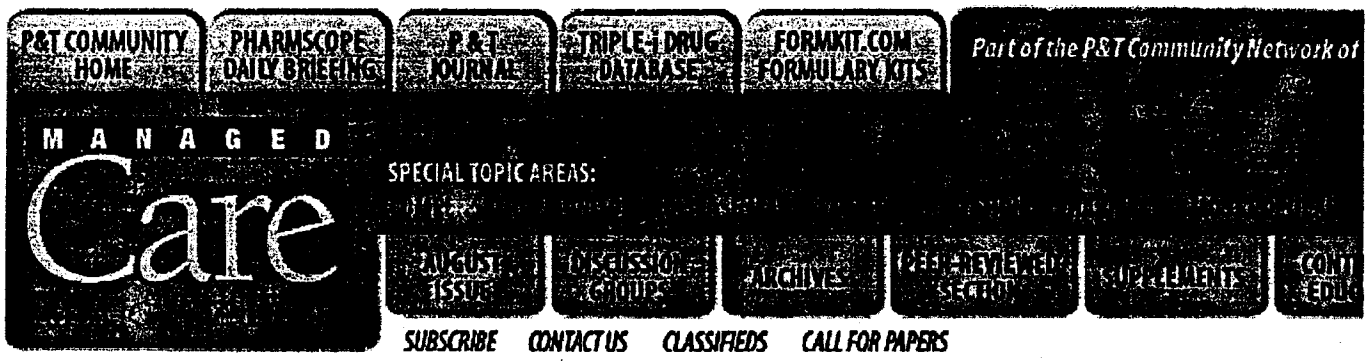
Maybe the government should look closer at other factors in health care spending, or at least at other IPAs.

A few years ago, Medical Select Management was Tarrant's County's largest IPA, with 1,700 members. With little warning, it collapsed and went bankrupt in July 2001, owing $21 million to area doctors.

Medical Select's former CFO was later indicted on embezzlement charges, and he recently pleaded guilty to tax evasion and money laundering.

That was a case that cried out for federal intervention. How about some government muscle when we need it?

Mitchell Schnurman's column appears Wednesdays and Sundays. (817) 390-7821 schnurman@star-telegram.com



NEWS AND COMMENTARY

Aetna, AMA Row Over Florida Contracts; HMO Faces Legal Trouble in Rhode Island

December was like a bad dream for Aetna U.S. Healthcare. The AMA raised a public stink against the nation's largest for-profit HMO over its physician contracts in Florida. The same week, Rhode Island cracked down over a physician shortage. And, if this were not enough, a physician revolt in Texas against AUSHC widened.

Actually, the HMO's nightmare started, appropriately, on Halloween. That day, the AMA fired off a scathing 11-page letter to AUSHC, charging that its Florida contracts use vague language allowing it to override a physician's determination of medical necessity and giving the insurer authority to change contract terms retroactively, without notice.

"Six states' medical societies contacted us about contractual problems, but the Florida Medical Association received a memo from AUSHC stating it refused to negotiate or discuss the situation," says William Mahood, M.D., a trustee of the AMA. AUSHC denies its doctors in Florida or elsewhere are forced to accept unilateral terms, and says it is reviewing contracts to modify language that can be construed in such a way.

The HMO also disagrees with the AMA on the issue of medical necessity, saying it merely follows practices that are standard throughout the managed care industry. Mahood agrees that other health plans second-guess physician decisions, but says "the inability of physicians to appeal is language we find really disturbing" in Florida contracts.

These are not the smoothest of times for the Blue Bell, Pa.-based HMO. The AMA action ignited the biggest in a series of grass fires that seem to pop up continually around AUSHC. Another flared in Rhode Island, where the HMO is in legal trouble over lack of

physicians.

Though officially it neither confirms nor denies problems in the Ocean State, AUSHC accepted a 30-page list of deficiencies when it signed a consent agreement with the state health department on Dec. 3. The trouble started in October, when a group of 80 primary care doctors pulled out of the HMO--touching off a probe into whether it had enough physicians to meet state requirements for access.

The agreement requires the HMO to submit a plan of corrective action. That plan will include a provision that care will be delivered through non-plan physicians to any member who cannot find an AUSHC doctor close to home. The insurer also agreed to a $10,000 fine and 12 months' probation.

Physician abandonment of AUSHC is also a problem in Texas, where the issue is cuts in payment. Seventy-five specialists in Specialty Net, near Fort Worth, bolted Nov. 22.

Doctors' Oath, Managed Care Are a Good Fit

The idea that managed care, in principle, conforms to the Hippocratic Oath may come as a surprise to some, but fee-for-service medicine is inherently no more ethical than managed care, says a panel of physicians, health plan executives, purchasers and consumer advocates convened by the Integrated Healthcare Association, a health care policy think-tank based in Pleasanton, Calif.

IHA examined whether the principles embodied in the Hippocratic Oath are impervious to systems of payment. After debating whether managed care is ethical, the group concluded that only the challenges of practicing medicine under managed care, not the actual delivery of care, differ from fee-for-service care. A physician's ethical code--fighting for what patients need, communicating honestly with them and staying current on best practices--remains constant, regardless of payment system, the IHA team said.

In fact, some in the group thought fee-for-service medicine poses more of an ethical quandary than does managed care. "The more you did, the more invasively you did it, the more you got paid," says Beau Carter, IHA executive director. "There was a real danger that physicians could practice 'why not' medicine--that is, 'Why not do this? Some insurance company will pay for it.'"

Carter prodded the physicians on their conclusions, telling them, "You guys aren't angry enough." The doctors belong to large medical groups where, in most cases, a single physician has less direct financial connection with payers than do doctors who contract individually. Carter says their response was, "I don't make money if I deny people care. If I practice bad medicine and people get sicker, I lose money."

How will this play in Omaha or New York? "If you're a single physician capitated for a small number of patients, there's a one-to-one relationship in how you practice medicine and get paid," Carter continues. "The group thought that even with stop-loss insurance, individual capitation is a bad deal. If we picked a group of six physicians in

Nebraska or six specialists in New York City, this conversation would be very different."

Analysts See Premium Hikes Lying in Wait

Happy New Year: Most analysts agree that employer premiums have nowhere to go but up in 1998, though there is less consensus on amount. HMOs' weak 1997 performances, coupled with other factors, are driving those predictions.

In a scene reminiscent of the gasoline wars of a generation ago, employer premiums remained flat or even declined in 1997 as health plans fiercely battled for market share. The fighting left lots of black eyes among plans, fueling predictions that employers could have to swallow increases of from 2 to 10 percent, depending on type of contract and market.

Competition wasn't all that weighed down health plans. Mike Coppola, who handles group health plan business for Brunswick Inc., an Akron, Ohio-based underwriting company, says the Health Insurance Portability and Accountability Act has insurers leery of writing new plans before they can study the medical conditions and liabilities of employees and their families. The act precludes health plans from placing limitations on members with pre-existing conditions.

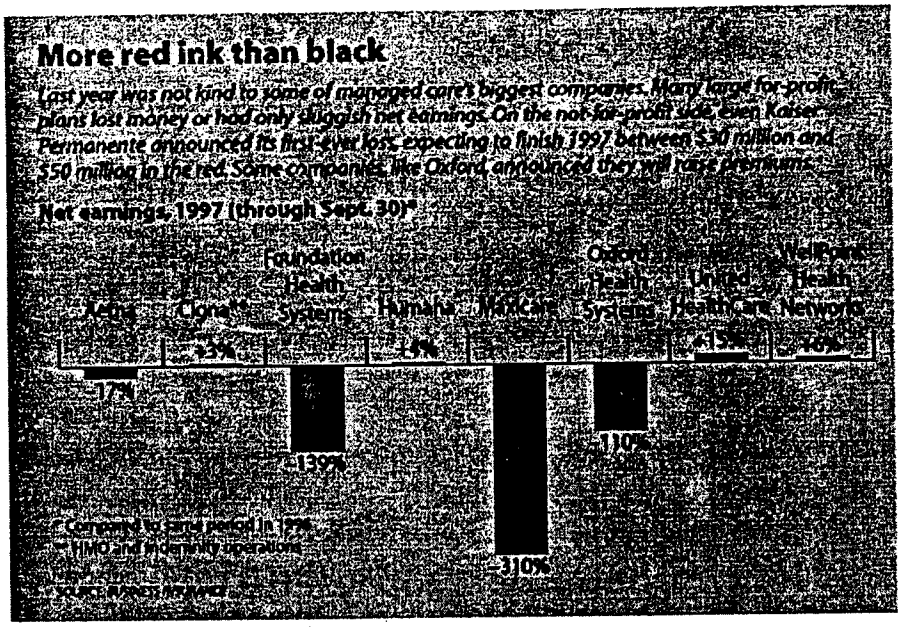
Runaway pharmaceutical costs have also hurt. HMOs are fighting back by restricting formularies and increasing copayment differentials between branded and generic drugs, but analysts say those strategies probably will not help enough.

Market trends aside, some HMOs are nursing wounds for which they only have themselves to blame. Oxford linked its $78 million third-quarter beating to problems in managing information systems. And Aetna's trouble digesting its acquisition of U.S. Healthcare pulled 1997 (through Sept. 30) net income down 17.3 percent.

--Michael D. Dalzell

More red ink than black

Last year was not kind to some of managed care's biggest companies. Many large for-profit plans lost money or had only sluggish net earnings. On the not-for-profit side, even Kaiser Permanente announced its first-ever loss, expecting to finish 1997 between $30 million and $50 million in the red. Some companies, like Oxford, announced they will raise premiums.



* Compared to same period in 1996

** HMO and indemnity operations

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Uniting with Hicks Muse: Hicks Muse Tate & Furst Inc. of Dallas agreed to buy the United Artists movie chain for $850 million. UA, the second-largest theater chain in the country, owns 145 screens in the Metroplex and 2,174 nationwide. UA officials said they had been prepping the chain for sale and waited until the market improved before selling.

Another Aetna argument: Aetna U.S. Healthcare aggravated more of its doctors with money matters. Specialty NET, a group of 75 specialists from northeastern Tarrant County, said it would pull out of Aetna on Nov. 22 because of fee cuts Aetna imposed this year. Earlier this fall, Aetna managed to appease more than 200 Dallas-area doctors who also threatened to leave over fee cuts.

Job growth peaking? The Metroplex job market might finally be slowing its pace of growth. M/PF Research, a Dallas-based research firm that tracks the real estate market, expects the area to enjoy a 12-year high of 4.3% more jobs, or 100,000, this year. M/PF expects that Metroplex job growth will slow to 70,000 in 1998.

Columbia cutting back: Columbia/HCA Healthcare Corp. of Nashville, Tenn., may shed 15 hospitals in Texas, including facilities in Lancaster, Terrell and Sherman. By selling or spinning off 108 hospitals nationwide, Columbia plans to shrink the company and turn decision making power from corporate to local levels.

G'day, Frito-Lay: Plano-based Frito-Lay will pay $410 million to acquire several overseas snack operations from United Biscuits Holdings P.L.C. of the United Kingdom. In turn, United Biscuits will buy Frito-Lay's weak French biscuit business for $30 million. With its new operations, Frito-Lay will become the No. 1 snack food producer in Australia and increase its presence in Belgium, Holland and France.

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Sept. 18, 2003, 11:07AM

FTC files complaint against North Texas group of nearly 600 doctors

Associated Press

FORT WORTH - The Federal Trade Commission has issued a complaint against a group of almost 600 doctors, saying the price of health care in the region was raised because of anti-competitive practices.

The FTC contends that North Texas Specialty Physicians collectively negotiated doctors' contracts with health insurers and exchanged members' prospective price information in violation of federal law.

The nonprofit physicians group, formed in 1995, includes doctors mostly in Fort Worth, Hurst, Euless and Bedford.

"The general principle is that physicians who are not members of the same integrated practices should not be jointly fixing the fees at which they market their services," Michael Bloom, senior counsel for the FTC's Northeast region, said Wednesday. "In essence, that is a kind of price-fixing, and that is the essence of the charge against the NTSP."

Officials of the physicians group declined to comment but issued a statement saying its practices are in line with recent court rulings.

"NTSP regrets the Federal Trade Commission's recent decision to sue us," the statement said. "We must defend our right to refuse being a party to someone else's contract. Specifically, we cannot agree to be a party to an HMO or health insurance contract that we believe may not be compliant with Texas Patient Protection laws passed by the Texas Legislature in the mid- and late 1990s."

Doctors routinely enter into contracts with health maintenance organizations and other insurers, agreeing to reduce prices in exchange for access to patients from the health plan's roster.

The action is the FTC's third recent clash with North Texas doctors.

The agency reached a settlement in August 2002 of anti-competitive charges against System Health Providers, whose 1,250 physicians practice primarily in the Fort Worth-Dallas area.

In June, Southwest Physician Associates, which represents about 1,000 doctors, agreed to settle charges that its collective bargaining had decreased competition.

HoustonChronicle.com -- http://www.HoustonChronicle.com | Section: Local & State
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The Dallas Morning News (KRTBN)

Thursday, September 18, 2003

North Texas Doctor Group Faces Pricing Allegations, Defends Its Approach

By Roger Yu, The Dallas Morning News
Knight Ridder/Tribune Business News

Sep. 18--Physician associations are once again under scrutiny. The Federal Trade Commission on Wednesday accused **North Texas Specialty Physicians**, a Fort Worth-based independent physician association, of negotiating prices and other terms with payers on behalf of its member doctors.

The actions of North Texas Specialty, which represents about 600 doctors in Dallas-Fort Worth, led to "unlawfully restrained competition, increasing the cost of health care for consumers" in the area, the regulatory agency said.

The physician group defended its position in a written statement but declined to comment further.

The administrative complaint underscores federal regulators' determination to level the playing field for insurers and doctors. And it could further restrict doctors trying to collectively bargain with insurers and managed care companies.

Doctors seek the best pricing and reimbursement terms they can extract from insurance companies. Unless they are employees of more financially integrated physician companies, they are legally bound to negotiate for themselves.

Many independent doctors feel they are at a disadvantage in negotiations against large payers and have joined independent physician associations for group bargaining leverage.

But IPAs are generally prohibited from active and unilateral negotiations, and are limited to being a "messenger" between doctors and insurance companies during the process.

North Texas Specialty, a nonprofit company, said Wednesday in a written statement that it regrets the FTC's action.

"We must defend our right to refuse being a party to someone else's contract," the IPA said. "Specifically, we cannot agree to be a party to an HMO or health insurance contract that we believe may not be compliant with ... [state laws]."

Without elaborating, North Texas Specialty also said that past federal court decisions affirm its position and that "outpatients, doctors and others would be ill served" if it departed from that position.

The FTC charged that North Texas Specialty refused to deal with payers unless the

proposals aligned with terms collectively accepted by its members. It also alleged that the IPA refused to submit offers by insurance and managed care companies to its member doctors unless the terms met North Texas Specialty's minimum demands.

Another local IPA, Southwest Physician Associates, settled a similar case with the FTC in June.

Southwest Physician, which represents about 1,000 doctors, was barred from engaging in future bargaining or negotiation with health insurers and other payers.

Until the late 1990s, many doctors became part of a health maintenance organization model in which they received a fixed fee – called capitation – for a set number of patients.

But the capitation model has all but disappeared in Texas, and doctors are now paid fees per service rendered, which carries lower risk. This newer model of practice has made negotiations with insurers more protracted and cumbersome.

The FTC said nearly all of North Texas Specialty's doctors render services on the fee-for-service basis, according to so-called non-risk contracts.

"With respect to these non-risk contracts, North Texas Specialty often has sought to negotiate for, and often has obtained, higher fees and other more advantageous terms than its individual physicians could obtain by negotiating individually with payers," it said.

Mike Malone, a Dallas-based health care attorney for Vinson & Elkins, said IPAs can collectively bargain on behalf of member doctors if they can show that they're "clinically integrated."

Thus, North Texas Specialty could argue that it is a clinically, if not financially, integrated organization.

To prove clinical integration, an IPA has to show that it effectively reviews health care utilization, selectively chooses doctors who are efficient and makes significant investments of time and money in developing infrastructure, Mr. Malone said.

Many IPAs are going to the FTC to demonstrate that they are clinically integrated even before any regulatory action is taken. "They're going to the FTC and saying, 'Give me some comfort,' " he said.

Among other FTC charges was that North Texas Specialty polled its members to determine the lowest levels of fees they would accept and used that information to bargain. Such exchange-of-price information among otherwise competing doctors "reduces price competition and enables the participating physicians to achieve supra-competitive prices," it said.

North Texas Specialty also discouraged payers and doctors from negotiating directly with one another, the FTC said.

The administrative complaint is only the beginning of proceedings, in which the allegations will be ruled upon after a hearing by an administrative law judge.

It could result in a cease-and-desist order, or in an order to end contracts negotiated with any payer.

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INDUSTRY: (Health Care (I951))

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OTHER INDEXING: 6

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Dallas Business Journal

LATEST NEWS

11:51 AM CDT Thursday

FTC files complaint against doctors' group

The Federal Trade Commission has accused North Texas Specialty Physicians, a 600-member doctors' group, of anti-competitive practices that pumped up the cost of health care in the area, according to reports.

The FTC issued a complaint charging that the group of doctors, who practice various specialties in Fort Worth and the suburbs, violated federal law by collectively negotiating contracts with insurance companies and exchanging prospective price information of member providers, reports said.

The nonprofit physicians group, which was formed in 1995, said in a written statement its practices are in line with recent court rulings, according to reports.

The FTC's move marks the third time in recent months that the agency has filed complaints against local doctors. In August of last year, System Health Providers settled an FTC charge in which the group of 1,250 physicians was accused of anti-competitive practices. In June of this year, the FTC reached a settlement with Southwest Physician Associates, a group of about 1,000 area doctors accused of collective bargaining.

Star-Telegram

Posted on Thu, Sep. 18, 2003

Doctors named in FTC lawsuit

By Maria M. Perotin
Star-Telegram Staff Writer

The Federal Trade Commission has issued a complaint against North Texas Specialty Physicians, accusing the group of almost 600 doctors of anti-competitive practices that raised the price of health care in the region.

The nonprofit physicians group, which was formed in 1995, includes doctors mostly in Fort Worth and the Mid-Cities who practice various specialties, as well as some primary-care physicians.

The FTC contends that the group collectively negotiated doctors' contracts with health insurers and exchanged members' prospective price information in violation of federal law.

"The general principle is that physicians who are not members of the same integrated practices should not be jointly fixing the fees at which they market their services," Michael Bloom, senior counsel for the FTC's Northeast region, said Wednesday. "In essence, that is a kind of price-fixing, and that is the essence of the charge against the NTSP."

Officials of the physicians group declined to comment Wednesday beyond a written statement that said its practices are in line with recent court rulings.

"NTSP regrets the Federal Trade Commission's recent decision to sue us," the statement said. "We must defend our right to refuse being a party to someone else's contract. Specifically, we cannot agree to be a party to an HMO or health insurance contract that we believe may not be compliant with Texas Patient Protection laws passed by the Texas Legislature in the mid- and late 1990s."

Doctors routinely enter into contracts with health maintenance organizations and other insurers, agreeing to reduce prices in exchange for access to patients from the health plan's roster.

In its lawsuit, the FTC argues that the North Texas group's physicians broke the law by refusing to negotiate with payers "except on collectively agreed-upon terms."

The suit also alleges that the group inappropriately polled participating doctors, asking them to disclose the fees they deemed acceptable and then calculating an average of minimum acceptable fees.

The action against the North Texas group marks the FTC's third clash with Metroplex doctors in recent months.

The agency reached a settlement in August 2002 of anti-competitive charges against System Health Providers, whose 1,250 physicians practice primarily in the eastern part of the Fort Worth-Dallas area. In June 2003, Southwest Physician Associates, which represents about 1,000 Metroplex doctors, agreed to settle charges that their collective bargaining had decreased competition.

"It is not unique. The commission has brought cases throughout the country," Bloom said. "It does seem as

though there has been a high degree of questionable joint activity by physicians in the North Texas area."

Maria M. Perotin, (817) 685-3808 mperotin@star-telegram.com

Caller.com

URL: http://www.caller.com/ccct/state_texas_news/article/0,1641,CCCT_876_2278022,00.html

Federal Trade Commission issues complaint against doctors

September 18, 2003

FORT WORTH, Texas- The Federal Trade Commission has issued a complaint against a group of almost 600 doctors, saying the price of health care in the region was raised because of anti-competitive practices.

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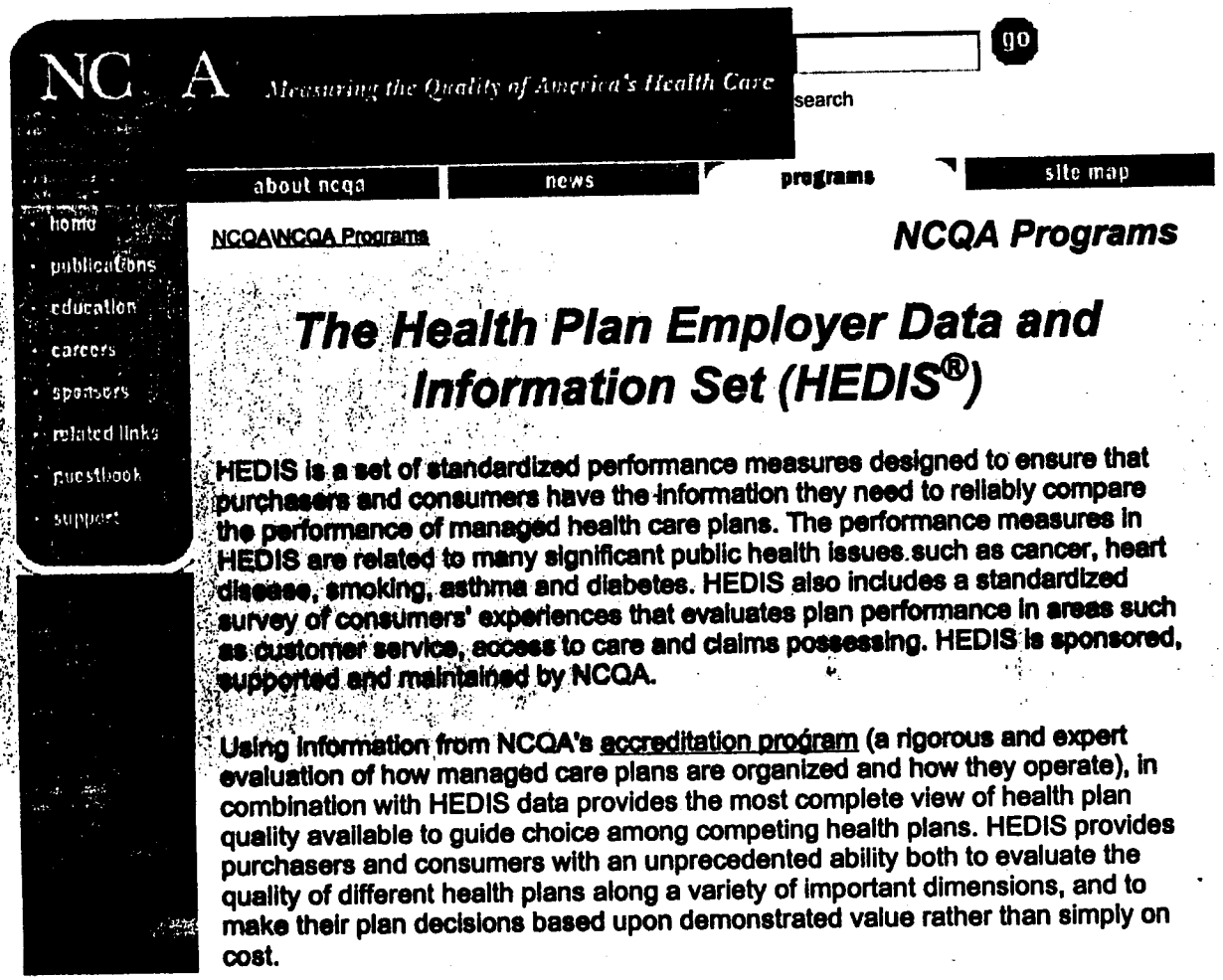

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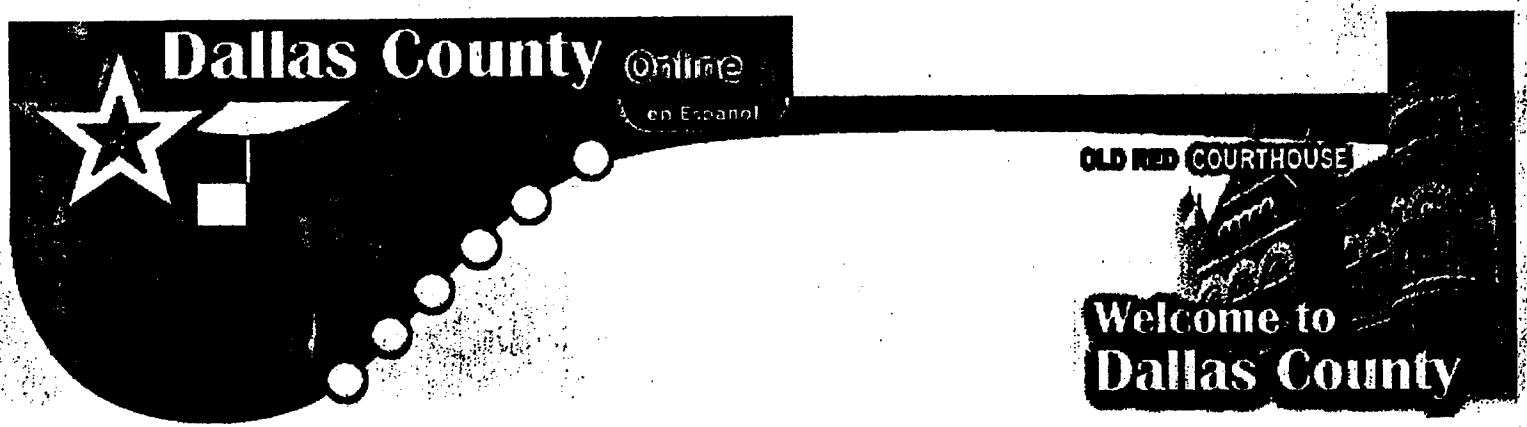

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Seagoville	University Park	Wilmer		

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Beaumont-Port Arthur MSA
Hardin, Jefferson, Orange

Brazoria PMSA
Brazoria

Brownsville-Harlingen-San Benito MSA
Cameron

Bryan-College Station MSA
Brazos

Corpus Christi MSA
Nueces, San Patricio

Dallas PMSA
Collin, Dallas, Denton, Ellis, Henderson, Hunt, Kaufman, Rockwall

El Paso MSA

El Paso

Ft. Worth-Arlington PMSA
Hood, Johnson, Parker, Tarrant

Galveston-Texas City PMSA
Galveston

Houston PMSA
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Killeen-Temple MSA
Bell, Coryell

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Longview-Marshall MSA
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Lubbock MSA
Lubbock

McAllen-Edinberg-Mission MSA
Hidalgo

Odessa-Midland MSA
Ector, Midland

San Angelo MSA
Tom Green

San Antonio MSA
Bexar, Comal, Guadalupe, Wilson

Sherman-Denison MSA

Grayson

Texarkana MSA
Bowie

Tyler MSA
Smith

Victoria MSA
Victoria

Waco MSA
McLennan

Wichita Falls MSA
Archer, Wichita

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EXHIBIT B

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of NORTH TEXAS SPECIALTY PHYSICIANS, a corporation.	DOCKET NO. 9312

COMPLAINT COUNSEL'S RESPONSE TO RESPONDENT'S FIRST SET OF INTERROGATORIES

Pursuant to Section 3.35 of the Federal Trade Commission's ("the Commission") Rules of Practice, Complaint Counsel hereby responds to Respondent North Texas Specialty Physician's ("NTSP") First Set of Interrogatories. As Complaint Counsel has indicated in its Objections to Respondent's First Set of Interrogatories of October 16, 2003 ("Complaint Counsel's Objections"), Interrogatories Number 1 and 2 are objectionable and we are not responding to those interrogatories herein. Subject to and in conformity with Complaint Counsel's Objections, in response to Interrogatories Number 3 and 4, we are providing responsive information acquired in the investigation of NTSP. Each response is preceded by the full text of the corresponding interrogatory.

Interrogatory Number 3:

Identify each person or entity from whom you have received documents or information concerning payor contracts in the DFW Metroplex.

Kelly Weber
ProNet

Austin Pittman
Pacificare

Rick Grizzle
CIGNA HealthCare of Texas

James Sabolik

CIGNA HealthCare of Texas

David Bird
CIGNA HealthCare

Giselle M. Molloy, Esq.
CIGNA Healthcare

Celina Burns
The Prudential Insurance Company of America

Sheila Ware
Aetna/U.S. Healthcare North Texas, Inc.

Anthony Dennis, Esq.
Aetna, Inc.

David Roberts
Aetna, Inc.

Chris L. Jagmin, M.D.
Aetna, Inc.

Mark Chulick, Esq.
Aetna, Inc., Southwest Region

Neil Fleishman, Esq.
Blue Cross/Blue Shield of Texas

Gary Cole
Humana, Inc.

Gary Reed, Esq.
Humana, Inc.

Arlene Ormsby
Humana, Inc.

John Lovelady
Pacificare

Lynda Marshall, Esq. (Pacificare)
Hogan & Hartson

Chris Bulger
Texas Health Choice, L.C.

David Beatty
United Healthcare of Texas, Inc.

Thomas Quirk
United Healthcare of Texas, Inc.

Michael Ile, Esq.
United Healthcare, Inc.

Dawn Boyd
ProNet

Daniel L. Wellington, Esq.
(Health Texas Provider Network & Humana, Inc.)
Fulbright & Jaworski, LLP

Phyllis Brasher, J.D., M.H.A.
Texas Health Choice, L.C.

C. Mark Bailey
Blue Cross/Blue Shield

David Rainey
CIGNA Healthcare of Texas

Diane Youngblood
HealthTexas Provider Network

Virginia Nisbet
American Airlines

Jackie Quick
American Airlines

Kevin Towery
AELRx

John Mayer

Don Snyder
Alcon Labs

Lisa Norris
City of Grand Prairie

Denise Eisen
AdvancePCS

Jene Clayton
Automation

Maureen Redman
Automation

Dennis Dear, Esq.
Automation

Eric Bassett
Mercer Human Resources Consulting

Mike Reece
Rockwall Independent School District

Tommie Smith
Rockwall Independent School District

Ted Troy
McQuery Henry Bouls Troy

Terrie Henderson, Director of HR
Carter BloodCare

Tad Linn, Esq.
First Health

Mike Wilson
First Health

Tom Byers,
USC Health Services

Denise Southhall
Private Health Care Systems

Carla Britten
Private Health Care Systems

Interrogatory Number 4:

Identify each person or entity from whom you have received documents or information concerning NTSP.

Kelly Weber
ProNet

Austin Pittman
Pacificare

Rick Grizzle
CIGNA HealthCare of Texas

James Sabolik
CIGNA HealthCare of Texas

David Bird
CIGNA HealthCare

Giselle M. Molloy, Esq.
CIGNA Healthcare

Celina Burns
The Prudential Insurance Company of America

Sheila Ware
Aetna/U.S. Healthcare North Texas, Inc.

Anthony Dennis, Esq.
Aetna, Inc.

David Roberts
Aetna, Inc.

Chris L. Jagmin, M.D.
Aetna, Inc.

Mark Chulick, Esq.
Aetna, Inc., Southwest Region

Blue Cross/Blue Shield of Texas

Neil Fleishman, Esq.
Blue Cross/Blue Shield of Texas

Gary Cole
Humana, Inc.

Gary Reed, Esq.
Humana, Inc.

Arlene Ormsby
Humana, Inc.

John Lovelady
Pacificare

Lynda Marshall, Esq. (Pacificare)
Hogan & Hartson

Chris Bulger
Texas Health Choice

David Beatty
United Healthcare of Texas, Inc.

Thomas Quirk
United Healthcare of Texas, Inc.

Michael Ile, Esq.
United Healthcare, Inc.

Dawn Boyd
ProNet

Daniel L. Wellington, Esq.
(Health Texas Provider Network & Humana, Inc.)
Fulbright & Jaworski, LLP

Ron Lutz
Genesis Physicians Group

Phyllis Brasher, J.D., M.H.A.
Texas Health Choice, L.C.

C. Mark Bailey
Blue Cross/Blue Shield

David Rainey
CIGNA Healthcare of Texas

Diane Youngblood
HealthTexas Provider Network

Virginia Nisbet
American Airlines

Jackie Quick
American Airlines

Kevin Towery
AELRx

John Mayer

Don Snyder
Alcon Labs

Lisa Norris
City of Grand Prairie

Denise Eisen
AdvancePCS

Jene Clayton
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Maureen Redman
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Mercer Human Resources Consulting

Mike Reece
Rockwall Independent School District

Tommie Smith
Rockwall Independent School District

Ted Troy
McQuery Henry Bouls Troy

Terrie Henderson
Carter BloodCare

Tad Linn, Esq.
First Health

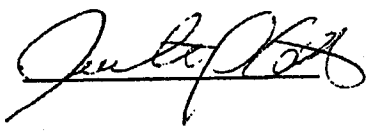
Mike Wilson
First Health

Tom Byers,
USC Health Services

Denise Southhall
Private Health Care Systems

Carla Britten
Private Health Care Systems

Respectfully submitted,



Jonathan Platt
Complaint Counsel
Northeast Region
Federal Trade Commission
1 Bowling Green, Suite 318
New York, NY 10004

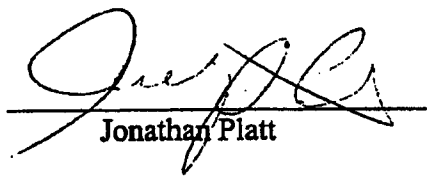
Dated: October 27, 2003

CERTIFICATE OF SERVICE

I, Jonathan Platt, hereby certify that on October 27, 2003, I caused a copy of Complaint Counsel's Response to Respondent's First Set of Interrogatories to be served upon the following person by email and by first class mail:

Gregory Huffman, Esq.
Thompson & Knight, LLP
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201-4693
Gregory.Huffman@tklaw.com

and by email upon the following: William Katz (William.Katz@tklaw.com).



Jonathan Platt

EXHIBIT C

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of NORTH TEXAS SPECIALTY PHYSICIANS, a corporation.	DOCKET NO. 9312

COMPLAINT COUNSEL'S OBJECTIONS TO RESPONDENT'S FIRST SET OF INTERROGATORIES

Pursuant to § 3.35 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings ("Rules of Practice"), 16 C.F.R. § 3.35, complaint counsel hereby submits objections to Respondent's Interrogatories to Complaint Counsel ("Interrogatories") issued on October 6, 2003. Each interrogatory is restated below, along with any applicable objections. Notwithstanding these objections, complaint counsel will respond subject to the objections made. Such responses shall not constitute a waiver of any applicable objection or privilege.

General Objections

1. Complaint counsel objects to the Interrogatories to the extent that they seek information that may be protected by the work product doctrine, attorney-client privilege, law enforcement privilege, deliberative process privilege, investigatory privilege, government informer privilege and other similar bases for withholding documents and information.

2. Complaint counsel objects to the Interrogatories to the extent that they seek to impose obligations broader than those required or authorized by the Rules of Practice or any applicable order or rule of this Court.

3. Complaint counsel objects to the Interrogatories to the extent that they are unduly burdensome or require unreasonable efforts on behalf of complaint counsel.

4. Complaint counsel objects to the Interrogatories, including the Definitions and Instructions, to the extent that Respondent objects to or does not undertake the same burdens in discovery.

These General Objections shall apply to each interrogatory herein and shall be incorporated by reference as though set forth fully in each of the responses to follow.

Objections and Responses to Individual Interrogatories

1. Identify each and every communication between NTSP and any alleged coconspirator in which the coconspirator agreed that he or she would reject a payor offer, including the date, time, content, and participants of such communication.

Objection: Complaint counsel objects to this interrogatory in that it is in the nature of a contention interrogatory and seeks information that is more properly sought after the completion of fact discovery, if at all.

2. Identify each and every act or practice of NTSP which you contend restrains trade, hinders competition, or constitutes an unfair method of competition, including the date of each such act or practice and how that act or practice restrained trade or hindered competition.

Objection: Complaint counsel objects to this interrogatory in that it is in the nature of a contention interrogatory and seeks information that is more properly sought after the completion of fact discovery, if at all.

3. Identify each person or entity from whom you have received documents or information concerning payor contracts in the DFW Metroplex.

Objection: Complaint counsel objects to this interrogatory because it is overly broad and is not sufficiently limited in duration and scope. Subject to and without waiving this objection, complaint counsel will provide an answer to this interrogatory.

4. Identify each person or entity from whom you have received documents or information concerning NTSP.

Objection: Subject to the general objections stated above, complaint counsel will provide an answer to this interrogatory.

Dated: October 16, 2003

Respectfully submitted,

Jonathan Platt
Attorney for Complaint Counsel
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004
(212) 607-2819
(212) 607-2822 (facsimile)

CERTIFICATE OF SERVICE

I, Jonathan Platt, hereby certify that on October 16, 2003, I caused a copy of Complaint Counsel's Objections to Respondent's First Set of Interrogatories to be served upon the following person by email and by first class mail:

Gregory Huffman, Esq.
Thompson & Knight, LLP
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201-4693
Gregory.Huffman@tklaw.com

and by email upon the following: William Katz (William.Katz@tklaw.com).

Jonathan Platt

EXHIBIT D

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
NORTHEAST REGION

One Bowling Green, Suite 318
New York, NY 10004
(212) 607-2829

Barbara Anthony
Regional Director

November 4, 2003

William M. Katz, Jr.
Thompson & Knight LLP
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201

Subject: North Texas Specialty Physicians Network, Docket No. 9312

Dear ~~Mr. Katz~~ Bill:

Per my email of October 30, 2003, I am writing to notice NTSP depositions pursuant to the Commission's Rules of Practice. We will take these depositions during the weeks of November 17, December 8, and December 15 at the Southwest Region Office of the Federal Trade Commission in Dallas, Texas, or such other location as we subsequently specify. Unless otherwise stated herein, each deposition will begin at 9:00 a.m. We expect that morning sessions will run until approximately 1:00 p.m., and that afternoon sessions will begin at 2:00 p.m. and run until approximately 6:00 p.m. All depositions will continue from day to day until completed. For your convenience, I will organize the remainder of this notice by the week during which the depositions are to be taken.

Week of November 17, 2003

A. Pursuant to Rule 3.33(c), we request that NTSP designate the persons most knowledgeable about each of the subjects listed below to testify "as to matters known or reasonably available to the organization," in the order here presented:

1. the founding of NTSP and any predecessor organization(s);

2. the drafting and modification of foundational documents of NTSP, including Constitution, By-Laws, and Physician Participation Agreements of all kinds;

3. the origins of NTSP's physician polling practices and procedures;

4. the structuring and execution of NTSP's polling practices and procedures and analyses and interpretations of physician responses (and nonresponses) thereto, including creation and modification of the polling instrument and related documents, testing of the validity of the polling instrument and related documents (for example with respect to sampling error or bias), and analyses of response rates and statistical significance of physician responses.

5. the structuring and use of physician opt-in/opt-out practices and procedures (including defaults) applicable generally and to particular payor agreements or proposals; and

6. decisions relating to inviting or permitting the participation (by whatever name designated) in NTSP contracts of: (a) physicians who have not agreed to share risk with other NTSP participants; and (b) primary care providers.

Please identify to Complaint Counsel the persons designated by NTSP to testify on each of the above topics by November 10. Depending upon the number of people designated by NTSP, and their facility with the information sought, we anticipate a total of one and one-half to two days on these "by designation" depositions. The by-designation depositions will begin at 2:00 p.m. on November 17. Without prejudice to our ability to continue these depositions, we anticipate concluding the by-designation depositions on November 21 at approximately 1:00 p.m.

B. The named current or former officers, directors, agents, or employees of NTSP:

1. William Vance, M.D., beginning at the conclusion of the by-designation depositions and likely continuing for a total of one and one half days, beginning at 9:00 a.m. on November 19 and, without prejudice, estimated to be completed at 1:00 p.m. on November 20.

2. Jack McCallum, M.D., beginning at the conclusion of the William Vance deposition and continuing for one full day; estimated to begin at 2:00 p.m. on November 20 and, without prejudice, to be completed at 1:00 p.m. on November 21.

Week of December 1, 2003

We anticipate beginning taking testimony at 9:00 a.m. on December 1, and taking the testimony of each of the persons identified below, in the order identified. Without prejudice, we anticipate each such deposition to be completed in approximately one-half day.

1. Doug Myers, M.D. , beginning at 9:00 a.m. on December 1.

2. Ira Hollander, M.D., beginning at 2:00 a.m. on December 1.

3. Frank Lonergan, M.D., beginning at 9:00 a.m. on December 2.

4. Harry Rosenthal, Jr., M.D., beginning at 2:00 a.m. on December 2.

5. John Nugent, M.D., beginning at 9:00 a.m. on December 3.

6. Mark Presley, M.D., beginning at 2:00 a.m. on December 3.

7. John W. Johnson, M.D., beginning at 9:00 a.m. on December 4.

8. Paul Grant, M.D., beginning at 2:00 a.m. on December 4.

9. Susan K. Blue, M.D., beginning at 9:00 a.m. on December 5.

Week of December 8, 2003

1. David Palmisano, beginning at 9:00 a.m. on December 9. Without prejudice, we anticipate completing this deposition at approximately 1:00 p.m. on December 10.

2. Jan Demetrek, beginning at 2:00 p.m. on December 10. Without prejudice, we anticipate completing this deposition at approximately 6:00 p.m. on December 10.

3. Leslie Carter, beginning at 9:00 a.m. on December 11. Without prejudice, we anticipate completing this deposition at approximately 1:00 p.m. on December 11.

4. Cherise Webster, beginning at 2:00 p.m. on December 11. Without prejudice, we anticipate completing this deposition at approximately 6:00 p.m. on December 11.

Week of December 15, 2003

1. Britton West, M.D. beginning at 2:00 p.m. on December 15. Without prejudice, we anticipate completing this deposition at approximately 6:00 p.m. on December 15.

2. Robert Ruxer, M.D. beginning at 9:00 a.m. on December 16. Without prejudice, we anticipate completing this deposition at approximately 1:00 p.m. on December 16.

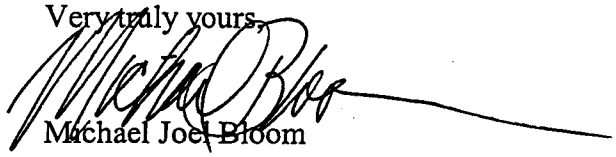
3. Mark Collins, M.D. beginning at 2:00 p.m. on December 16. Without prejudice, we anticipate completing this deposition at approximately 6:00 p.m. on December 16.

4. Thomas Deas, M.D., beginning at 9:00 a.m. on December 17. Without prejudice, we anticipate completing this deposition at approximately 6:00 p.m. on December 17.

5. Karen Van Wagner, Ph.D., beginning at approximately 9:00 a.m. on December 18. Without prejudice, we anticipate completing this deposition at approximately 1:00 p.m. on December 19.

Please contact me as soon as practicable with NTSP's deposition designees and any questions, comments, or suggestions that you may have.

Very truly yours,



Michael Joel Bloom
Senior Counsel to the Northeast Region

mjb/ntsp/Katz110403pmltr.wpd

EXHIBIT E

"Bloom, Michael J"
<MJBLOOM@ftc.gov
>

10/30/2003 04:55 PM

To: <William.Katz@tklaw.com>
cc: <huffman@tklaw.com>, <Cindy@Templesinainj.org>
Fax to:
Subject: Follow up to 10/30/03 Teleconference

Bill, the purpose of this email is to follow up on our teleconference of this afternoon.

Regarding the prioritization of the "other litigation" portion of NTSP's document return, we would like first to receive the pleadings files in the two law suits. Beyond that, if you would let us know the parties to and subject of the litigation in which NTSP received the third-party subpoena, we can tell you whether we would prefer that that matter or MSM be given the higher priority. We would appreciate it if you could provide the information and pleadings files to us by next Wednesday.

Regarding possible stipulations, I asked that we both give thought to areas of possible stipulation to reduce the trial burden on the parties and Judge Chappell. I propose that we enter into a stipulation to the effect that the operations of NTSP, including its dealings with physicians, payors, and others, are in and effect interstate commerce. Will you so-stipulate?

Finally, I indicated my concern that depositions be promptly scheduled in light of Judge Chappell's tight discovery deadlines. I will be contacting you early next week with a more detailed description, but I wanted to give you the earliest possible notice: we will be noticing NTSP depositions for the weeks of November 17, December 1, and following. During the week of November 17 we will seek to depose Dr. Vance and whatever person or persons at NTSP you identify as most knowledgeable about the origins and execution of NTSP's polling practices and its structuring and execution of physician opt-ins/outs (including defaults) to NTSP-payor contracts or proposed contracts. I anticipate that the deposition of Dr. Vance will take two consecutive days; the other depositions I anticipate will take one day, but all depositions will continue from day to day until completed. During the week of the 17th we also will seek to depose Drs. Hollander, Blue, and/or McCallum.

I look forward to speaking with you early next week.

--Michael Bloom

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF NORTH TEXAS SPECIALTY PHYSICIANS, A CORPORATION.	**Docket No. 9312**

Order Granting Expedited Motion of North Texas Specialty Physicians and Southwest Neurological Associates for a Protective Order and To Stay Depositions, or the Alternative, Motion to Quash Depositions

I.

On November 12, 2003 Respondent North Texas Specialty Physicians and Southwest Neurological Associates, PA filed an Expedited Motion for a Protective Order and to Stay Depositions, or in the Alternative, Motion to Quash Depositions. The FTC filed its opposition. For the reasons set forth below, the motion is GRANTED**.**

II.

Pursuant to 16 C.F.R. § 3.31(d), Respondent seeks a protective order postponing depositions, so that Respondent will have received written discovery responses from the FTC and had time to review and analyze that discovery. To prevent the prejudice that would result from the current deposition schedule, it is ordered that no depositions will be conducted until at least 10 days after the FTC has (a) answered interrogatory numbers 1 and 2, and (b) has produced the documents it has received from third parties and which are responsive to Respondent's requests for production and initial disclosures, whichever is later. Southwest Neurological Associates, PA also seeks an order extending its deadline to respond to the FTC's subpoena duces tecum until November 21, 2003. This schedule comports with the scheduling order in this proceeding and will provide all the parties sufficient time to review and analyze the written discovery that will ultimately be produced prior to the taking of depositions.

III.

It is further ordered that the parties are to confer regarding the scheduling of depositions with regard to the appropriate date, time, and location. To avoid adverse effects on patient care, every physician that is deposed by the FTC shall have the right to be deposed in the city of their residence or practice.

IV.

Finally, it is ordered that the deadline for Southwest Neurological Associates, PA to respond to the FTC's subpoena is extended until November 21, 2003.

Ordered:

_____
D. Michael Chappell
Administrative Law Judge

Date: