

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF

NORTH TEXAS SPECIALTY PHYSICIANS,
A CORPORATION.

Docket No. 9312

NORTH TEXAS SPECIALTY PHYSICIANS' MOTION TO COMPEL SUBSTITUTION OF CORPORATE REPRESENTATIVE FOR DEPOSITION FROM NON-PARTY AETNA HEALTH INC.

Pursuant to 16 C.F.R. § 3.38, Respondent North Texas Specialty Physicians ("NTSP") seeks an order compelling Aetna Health Inc. ("Aetna") to provide another corporate representative to be deposed on topics noticed by a subpoena *ad testificandum*. The corporate representative previously provided by Aetna for deposition was not reasonably knowledgeable about these examination topics. In support, NTSP shows the following:

I.

Background

In the pending FTC proceeding, NTSP has been accused of restraining trade and otherwise hindering competition by using price fixing to obtain supra-competitive prices and deprive payors like Aetna of the benefits of competition between providers.¹ As a payor, Aetna has information in its possession relating to prices and practices in the marketplace. This information is relevant and vital to NTSP's defense. To obtain this information, on January 12, 2004, NTSP served Aetna with a subpoena *ad testificandum*.² Aetna has not complied with this subpoena. Specifically, the corporate representative provided by Aetna for deposition on Wednesday, January 28, 2004, Dave Roberts, was not adequately knowledgeable about noticed

¹ See Complaint, ¶¶ 11-12, 16-17, 23-24.

² Subpoena *ad testificandum* to Aetna Health Inc. attached as Exhibit A.

examination topics related to communications, negotiations, and contracts with NTSP. He also had no knowledge of any information (other than what was in the produced documents) before 2001, even though the subpoena noticed information beginning in 1998.³ Aetna has a current employee, Chris Jagmin, who was involved with NTSP and is quite knowledgeable on these topics and dates. Dave Roberts repeatedly identified Chris Jagmin as the person who would have knowledge to answer the questions about pre-2001 events which Mr. Roberts could not answer. NTSP accordingly asks the Administrative Law Judge to compel Aetna to make available for deposition Chris Jagmin, or another corporate representative who is knowledgeable about these topics and dates, within ten days of the Administrative Law Judge's order granting this motion.

II.

Argument and Authorities

Aetna has failed to comply with the subpoena *ad testificandum* by producing a corporate representative for deposition that was not reasonably knowledgeable about the noticed examination topics and dates. When a organization is noticed as a deponent, the organization must designate one or more persons to testify as to matters "known or reasonably available to the organization."⁴ If the subject matter of the noticed deposition is provided, that organization has an *affirmative duty* to make available persons who are familiar with that subject and able to give

³ See Subpoena *Ad Testificandum*, attached as Exhibit A.

⁴ *Starlight Int'l, Inc. v. Herlihy*, 186 F.R.D. 626, 638 (D. Kan. 1999); *Protective Nat'l Ins. Co. v. Commonwealth Ins. Co.*, 137 F.R.D. 267, 277-78 (D. Neb. 1989).

“complete, knowledgeable, and binding answers.”⁵ This affirmative duty includes a “conscientious good-faith endeavor” to designate knowledgeable persons and prepare them properly.⁶ If the designated persons do not meet these requirements during the deposition, the organization is required to provide a substitute that does.⁷

Here, Aetna presented Dave Roberts as the representative knowledgeable about all examination topics. However, as the deposition progressed, it became clear that Roberts was unable to answer questions relating to conversation or contracts with NTSP before 2001, the subject of noticed examination topics.⁸

This presentation of Roberts, a witness not knowledgeable about the noticed examination topics, does not meet Aetna’s duty to provide a representative deponent. Aetna, as an organization, has reasonable knowledge of its contracts and other communications with NTSP before 2001, the topics on which Roberts was unable to be questioned. In fact, some of the examination topics not sufficiently answered during Roberts deposition were identified by Complaint Counsel as possible subjects of testimony by Aetna employees Dave Roberts, Chris

⁵ *Reilly v. Natwest Mkts. Group, Inc.*, 181 F.3d 253, 268 (2d Cir. 1999); *Hooker v. Norfolk So. Ry. Co.*, 204 F.R.D. 124, 126 (S.D. Ind. 2001) (burden is on organization to identify knowledgeable witness); *Starlight Int’l, Inc.*, 186 F.R.D. at 639 (requiring full and unevasive answers to questions).

⁶ *Starlight Int’l, Inc.*, 186 F.R.D. at 638 (duty requires the designated representative to review all matters known or reasonably available in preparation for deposition); *Quantachrome Corp. v. Micromeritics Instrument Corp.*, 189 F.R.D. 697, 699 (S.D. Fla. 1999) (there is an additional duty to prepare a representative deponent); *Protective Nat’l Ins. Co.*, 137 F.R.D. at 278.

⁷ *Starlight Int’l, Inc.*, 186 F.R.D. at 639.

⁸ Deposition of Dave Roberts, 31:1-36:13, 39:24-40:5, 44:16-20, 45:5-12, 46:11-18, 47:8-12, 48:3-12, attached as Exhibit B; Exhibit A, Subpoena *Ad Testificandum*.

Jagmin, and Celina Burns.⁹ For this reason, NTSP requested that Aetna designate both Roberts and Jagmin as representative deponents. Aetna responded that it would designate Roberts only, but that it would educate Roberts on all information known to Jagmin. It is clear from the deposition that Roberts was not so educated or otherwise properly prepared for the deposition on all noticed examination topics and dates.¹⁰ The Fifth Circuit found that a corporation violated its duty to designate a knowledgeable representative when it knew a particular person had personal knowledge of the examination topics but designated this person only after designating two other persons who had no knowledge on the topics.¹¹

Aetna did not make a good faith effort to produce a witness who was reasonably knowledgeable about the noticed examination topics and dates. Roberts did not provide “complete and knowledgeable” answers to NTSP’s questions. Aetna has other employees who are knowledgeable. One of those employees is Jagmin. Aetna violated its duty when it failed to designate Jagmin or adequately prepare Roberts on topics about which Jagmin was more knowledgeable. Aetna is now required to substitute Jagmin or another fully knowledgeable and prepared representative deponent to answer questions that were not answered at Roberts’s deposition.

⁹ Exhibit A, Subpoena *Ad Testificandum*.

¹⁰ Roberts testified Jagmin is the Aetna employee with personal knowledge of noticed examination topics prior to 2001. See Deposition of Dave Roberts 14:7-19 and 27:14-18, attached as Exhibit B.

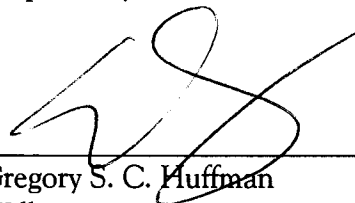
¹¹ *Resolution Trust Corp. v. S. Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993).

III.

Conclusion

For all of these reasons, NTSP requests that the Administrative Law Judge (a) grant its motion to compel; (b) order Aetna Health Inc. to substitute and make available for deposition, within ten days from the date of the order, Chris Jagmin or another corporate representative fully knowledgeable of information noticed in NTSP's Subpoena *Ad Testificandum* examination topics; and (c) grant such other and further relief to which NTSP may be justly entitled.

Respectfully submitted,



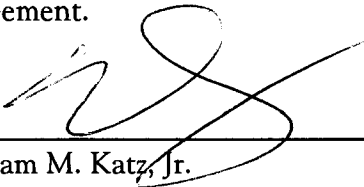
Gregory S. C. Huffman
William M. Katz, Jr.
Gregory D. Binns

THOMPSON & KNIGHT LLP
1700 Pacific Avenue, Suite 3300
Dallas TX 75201-4693
214.969.1700
214.969.1751 - Fax
gregory.huffman@tklaw.com
william.katz@tklaw.com
gregory.binns@tklaw.com

**ATTORNEYS FOR NORTH TEXAS
SPECIALTY PHYSICIANS**

CERTIFICATE OF CONFERENCE

Counsel for Respondent North Texas Specialty Physicians has conferred with counsel for Aetna Health Inc. 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.



William M. Katz, Jr.

CERTIFICATE OF SERVICE

I, William M. Katz, Jr., hereby certify that on January 30, 2004, I caused a copy of the foregoing to be served upon the following persons:

Michael Bloom (via e-mail and Federal Express)
Senior Counsel
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

Barbara Anthony (via certified mail)
Director
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

Hon. D. Michael Chappell (via Federal Express)
Administrative Law Judge
Federal Trade Commission
Room H-104
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Office of the Secretary (via e-mail and Federal Express)
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue NW
Washington, D.C. 20580

John B. Shely (via certified mail and Federal Express)
Counsel for Aetna Health Inc.
600 Travis Street, Suite 4200
Houston, TX 77002

Kay Lynn Brumbaugh (via certified mail and Federal Express)
Counsel for Aetna Health Inc.
Andrews & Kurth LLP
1717 Main Street, Suite 3700
Dallas, TX 75201

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



William M. Katz, Jr.

Exhibit A

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

1700 PACIFIC AVENUE • SUITE 3300
DALLAS, TEXAS 75201-4693
(214) 969-1700
FAX (214) 969-1751
www.tklaw.com

DIRECT DIAL: 214.969.1372
DIRECT FAX: 214.999.1662
E-MAIL: Gregory.Binns@tklaw.com

AUSTIN
DALLAS
FORT WORTH
HOUSTON

ALGIERS
MONTERREY
PARIS
RIO DE JANEIRO

January 12, 2004

VIA HAND DELIVERY

Aetna Health Inc.
c/o C T Corporation System, Registered Agent
350 N. St. Paul Street
Dallas, TX 75201

Re: North Texas Specialty Physicians, Docket No. 9312

To Whom it May Concern:

Enclosed please find a subpoena *ad testificandum* for the above-captioned case, requiring you to designate one or more officers, directors, or managing agents, or other persons who consent to testify on your behalf, to testify regarding the topics of examination attached to the subpoena *ad testificandum*. The persons so designated shall testify to matters known or reasonably available to the organization. See 16 C.F.R. § 3.33(c).

Also enclosed is a copy of the Protective Order Governing Discovery Material ("Protective Order"). The Protective Order governs the discovery material given by parties and third parties in this adjudicative proceeding and lays out your rights and protections.

I am happy to answer any questions you have regarding the topics of examination in the subpoena *ad testificandum* or the Protective Order. I can be reached at the telephone number above.

Yours very truly,



Gregory D. Binns

GDB/dep

Enclosure

007155 000034 DALLAS 1688365.1

JANUARY 12, 2004

PAGE 2

bcc: Karen Van Wagner (w/enclosure)
Gregory Huffman (w/enclosure)
William Katz (w/enclosure)



SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

<p>1. TO</p> <p>Aetna Health Inc. c/o C T Corporation System, Registered Agent 350 N. St. Paul Street Dallas, Texas 75201 *see attached for topics of examination</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	---

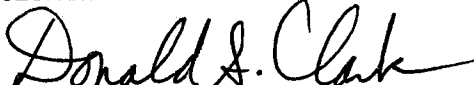
This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF HEARING</p> <p>Thompson & Knight 1700 Pacific Avenue, Suite 3300 Dallas, Texas 75201-4693</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE Gregory S. C. Huffman or other designated Respondent's Counsel</p> <hr/> <p>5. DATE AND TIME OF HEARING OR DEPOSITION January 27, 2004 at 9:00 a.m.</p>
--	--

6. SUBJECT OF PROCEEDING

In the Matter of North Texas Specialty Physicians, Docket No. 9312

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA Gregory S. C. Huffman Thompson & Knight LLP 1700 Pacific Avenue, Suite 3300 Dallas, Texas 75201</p>
--	---

<p>DATE ISSUED</p> <p>NOV 24 2003</p>	<p>SECRETARY'S SIGNATURE</p> 
---------------------------------------	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

in person.

by registered mail.

by leaving copy at principal office or place of business, to wit:

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

Pursuant to 16 C.F.R. § 3.33(c), Aetna Health Inc. shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, to testify on the topics of examination listed below. The persons so designated shall testify as to matters know or reasonably available to the organization.

Topics for Examination

1. The negotiation and terms of contracts Aetna Health Inc., Aetna U.S. Healthcare of North Texas Inc., Aetna U.S. Healthcare, or any of its parents, subsidiaries, affiliates, predecessors, or successors (hereinafter referred to collectively as "Aetna") has had or attempted to negotiate with North Texas Specialty Physicians and other physician providers located in Collin, Dallas, Denton, Ellis, Grayson, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, all of which are located in the State of Texas.
2. The contractual rates paid by Aetna for medical services provided by physician providers in Texas and any comparisons of those rates conducted by Aetna or others.
3. Comparisons of medical expense (PMPM) for HMO network primary care physicians located in Texas in regard to physician, pharmacy and facility costs.
4. Comparisons of unique-patient-seen costs per physician or of utilization indicators of procedures performed per unique-patient-seen, by physician or by specialty division.
5. The geographic service areas in Texas set by Aetna for physician providers in Texas and how those geographic service areas are determined by Aetna.
6. The topics listed under the designation of Dave Roberts, Dr. Chris Jagmin, and Celina Burns on Complaint Counsel's Preliminary Witness List, a copy of which is attached as Exhibit A.
7. Documents, information, and interviews provided by Aetna to the Federal Trade Commission in the last 18 months regarding the investigation of physician groups in North Texas.
8. Aetna's complaints about or criticisms of North Texas Specialty Physicians.

The relevant time period for these topics is January 1, 1997 through the present.

CERTIFICATE OF SERVICE

I, Greg D. Binns, hereby certify that on January 12, 2004, I caused a copy of the foregoing to be served upon the following by e-mail and Federal Express:

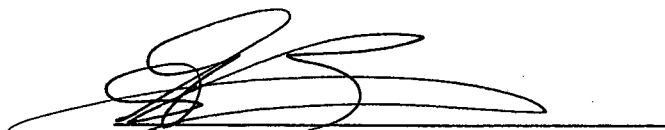
Michael Bloom
Senior Counsel
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

and upon the following via hand delivery

Aetna Health Inc.
c/o C T Corporation System, Registered Agent
350 N. St. Paul Street
Dallas, Texas 75201

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

Respectfully submitted,



Gregory S. C. Huffman
William M. Katz, Jr.
Gregory D. Binns

THOMPSON & KNIGHT LLP
1700 Pacific Avenue, Suite 3300
Dallas TX 75201-4693
214 969 1700
214 969 1751 - Fax
gregory.huffman@tklaw.com
william.katz@tklaw.com

**ATTORNEYS FOR NORTH TEXAS
SPECIALTY PHYSICIANS**

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of
NORTH TEXAS SPECIALITY PHYSICIANS,
a corporation.

Docket No. 9312

COMPLAINT COUNSEL'S PRELIMINARY WITNESS LIST

Pursuant to the scheduling order in this matter, Complaint Counsel submits our preliminary witness list. We reserve the right:

- A. to present testimony, by deposition or orally by live witness, from any other person who has been or may be identified by respondents as a potential witness in this matter and any person from whom discovery is sought;
- B. to further supplement this witness list as circumstances may warrant, in accordance with the scheduling order;
- C. to identify rebuttal witnesses as soon as we have had an opportunity to depose the respondent's witnesses (and other company representatives), and once we have received the respondent's expert reports; and
- D. not to call any of the persons listed below to testify at the hearing, as circumstances may warrant.

Subject to these reservations of rights, our preliminary list of witnesses is as follows:

THIRD PARTY WITNESSES

1. Rick Haddock, Blue Cross Blue Shield of Dallas, Texas

Mr. Haddock is Director for Network Management for Blue Cross Blue Shield of Dallas, Texas ("BCBS"). We expect Mr. Haddock and/or another representative of BCBS to testify about:

- The nature of BCBS.
- Different types of health insurance, including HMO and PPO products.
- North Texas Speciality Physicians ("NTSP") and its participating physicians.
- Physician, hospital, and health plan competition in Tarrant County and adjacent Counties in Texas, as well as other areas.
- Communications and negotiations with NTSP or its participating physicians.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective departicipations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.

2. David Bird and Rick Grizzle of CIGNA Healthcare of Texas, Inc.

David Bird was Associate Vice President of Network Operations and Rick Grizzle is Vice President of Network Development for CIGNA Healthcare of Texas, Inc. ("CIGNA"). We expect them and/or another representative of CIGNA to testify about:

- The nature of CIGNA.
- Different types of health insurance, including HMO and PPO products.
- NTSP and its participating physicians.
- Physician, hospital, and health plan competition in Tarrant County and adjacent Counties in Texas, as well as other areas.
- Communications and negotiations with NTSP or its participating physicians.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.

- NTSP's explicit or implicit refusals to deal or collective departicipations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.

3. Thomas Quirk and Dr. David Ellis, United Healthcare of Texas

Thomas Quirk is CEO and President and Dr. Ellis is Medical Director for United Healthcare of Texas ("UHC"). We expect them and/or another representative of UHC to testify about:

- The nature of UHC.
- Different types of health insurance, including HMO and PPO products.
- NTSP and its participating physicians.
- Physician, hospital, and health plan competition in Tarrant County and adjacent Counties in Texas, as well as other areas.
- Communications and negotiations with NTSP or its participating physicians.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective departicipations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.

4. Dave Roberts, Dr. Chris Jagmin, and Celina Burns, Aetna, Inc.

Dave Roberts is Senior Network Manager, Dr. Chris Jagmin is Medical Director, Patient Management, and Celina Burns was General Manager for Aetna, Inc. We expect them and/or another representative of Aetna, Inc. to testify about:

- The nature of Aetna, Inc.
- Different types of health insurance, including HMO and PPO products.
- NTSP and its participating physicians.
- Physician, hospital, and health plan competition in Tarrant County and adjacent Counties in Texas, as well as other areas.
- Communications and negotiations with NTSP or its participating physicians.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.

- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective de participations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.

5. Diane Youngblood, Health Texas Provider Network

Diane Youngblood is Vice President of Network Management for Health Texas Provider Network ("HTPN"). We expect Ms. Youngblood and/or another representative of HTPN to testify about:

- HTPN, which is an IPA.
- NTSP and its participating physicians.
- Communications with NTSP and/or its participating physicians.
- HTPN's affiliation with NTSP and/or its participating physicians and any other agreements between NTSP and HTPN.
- NTSP's explicit or implicit refusals to deal or collective de participations, or threats to do either.

6. Jim Mosley, Benefits Consultant for Effective Plan Management, Inc.

We expect Mr. Mosley and/or a representative of the City of Fort Worth to testify about:

- Effective Plan Management, Inc., which is a benefits consulting company for the City of Fort Worth.
- Physician, hospital, and health plan competition in Tarrant County, Texas and adjacent Counties.
- The purpose, nature, and affect of Effective Plan Management, Inc.'s and the City of Fort Worth's relationship with payors, third party administrators, brokers, or consultants in Tarrant County and adjacent Counties in Texas, as well as other areas.
- Communications with such entities.
- Criteria used in selecting a plan administrator.
- Discussions concerning contracting with physicians' organizations.
- The price of medical services, including physician services, and the effect of same on the City of Fort Worth.
- Standards used concerning or assessing minimum or desirable physician coverage levels in Tarrant County and adjacent Counties in Texas.
- Geographic access studies performed by or for City of Fort Worth.

- Disruption analyses prepared by or for the City of Fort Worth assessing the effects on employee access to physicians (including specialists) if the City of Fort Worth switched to a different payor provider network.

RESPONDENT

1. Karen Van Wagner

Ms. Van Wagner is the Executive Director NTSP. We expect Ms. Wagner to testify about:

- NTSP and its participating physicians.
- NTSP's physician boards and committees.
- The formation and purpose of NTSP.
- The operations and functions of NTSP.
- The creation and purpose of NTSP's polling instrument.
- The work Ms. Van Wagner performed on NTSP's behalf.
- Different types of health insurance, including HMO and PPO products.
- Physician, hospital, and health plan competition in Tarrant County, Texas and adjacent Counties.
- NTSP's relationship and affiliation with physicians, physician organizations, payors, and employers.
- Communications and negotiations with physicians, physician organizations, payors, and employers.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective de participations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.
- NTSP's purported efficiencies.
- Contextual and other information relating to NTSP and other documents that may appear on Complaint Counsel's exhibit list.

2. Dr. William Vance, M.D.

Dr. Vance was a founding member of NTSP and serves on its Board of Directors. We expect Dr. Vance to testify about:

- NTSP and its participating physicians.
- NTSP's physician boards and committees.
- The formation and purpose of NTSP.
- The operations and functions of NTSP.
- The creation and purpose of NTSP's polling instrument.
- The work Dr. Vance performed on NTSP's behalf.
- Different types of health insurance, including HMO and PPO products.
- Physician, hospital, and health plan competition in Tarrant County, Texas and adjacent Counties.
- NTSP's relationship and affiliation with physicians, physician organizations, payors, and employers.
- Communications and negotiations with physicians, physician organizations, payors, and employers.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective deparicipations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.
- NTSP's purported efficiencies.

3. NTSP

We expect to call other representatives of NTSP to testify about:

- NTSP and its participating physicians.
- NTSP's physician boards and committees.
- The formation and purpose of NTSP.
- The operations and functions of NTSP.
- The creation and purpose of NTSP's polling instrument.
- Different types of health insurance, including HMO and PPO products.
- Physician, hospital, and health plan competition in Tarrant County, Texas and adjacent Counties.
- NTSP's relationship and affiliation with physicians, physician organizations, payors, and employers.
- Communications and negotiations with physicians, physician organizations, payors, and employers.
- The cost of physician services.

- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective departicipations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.
- NTSP's purported efficiencies.

4. NTSP Participating Physicians and/or their Office Managers

We expect to call some of NTSP physician members and/or their office managers. We expect them to testify about:

- NTSP and its participating physicians.
- NTSP's physician boards and committees.
- The formation and purpose of NTSP.
- The operations and functions of NTSP.
- The creation and purpose of NTSP's polling instrument.
- Different types of health insurance, including HMO and PPO products.
- Physician, hospital, and health plan competition in Tarrant County, Texas and adjacent Counties.
- NTSP's relationship and affiliation with physicians, physician organizations, payors, and employers.
- Communications and negotiations with physicians, physician organizations, payors, and employers.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective departicipations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.
- NTSP's purported efficiencies.

Respectfully Submitted,

Handwritten signature of Susan E. Raitt in cursive script, written over a horizontal line.

Susan E. Raitt
Complaint Counsel
Federal Trade Commission
Northeast Regional Office
One Bowling Green, Suite 318
New York, NY 10004

Dated: December 9, 2003

CERTIFICATE OF SERVICE

I, Christine Rose, hereby certify that on December 9, 2003, I caused a copy of the foregoing document to be served upon the following persons:

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

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room H-104
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Office of the Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue NW
Washington, D.C. 20580



Christine Rose
Honors Paralegal

Exhibit B

EXCERPTS FROM DEPOSITION OF DAVE ROBERTS
TAKEN JANUARY 29, 2004

14

14:03:50 7 Q. Let me enter my questions for the topics one
14:03:56 8 through 8 would Dr. Jagmin be the Aetna person with
14:04:00 9 personal knowledge of these?

14:04:04 10 A. Yes.

14:04:08 11 Q. And was there a period prior to 98 where
14:04:12 12 somebody else other than Dr. Jagmin would be the one
14:04:16 13 with personal knowledge on these 8 topics?

14:04:28 14 A. No. Actually Dr. Jagmin was in the market
14:04:30 15 prior to 98.

14:04:32 16 Q. Oh okay. So prior to the summer of 2000, all
14:04:36 17 the way back to January 1, 1997 Dr. Jagmin would be the
14:04:38 18 one with personal knowledge?

14:04:40 19 A. Yes.

27

14:28:36 14 Q. All right. Did you have any dealings with MSM
14:28:38 15 in the period prior to may of 2000?

14:28:44 16 A. No.

14:28:44 17 Q. Would that have been Dr. Jagmin?

14:28:46 18 A. Yes.

14:43:20 1 Q. What is your knowledge of this contract?

14:43:26 2 A. I don't have any knowledge of this contract.

14:43:32 3 Q. As you can tell this is a risk contract

14:43:36 4 between select and NTSP. Was select -- was this

14:43:42 5 contract activated in order to provide services to

14:44:52 6 Aetna?

14:44:52 7 A. I'm sorry. I can't speak to this.

14:44:56 8 Q. Would this be something Dr. Jagmin would know?

14:45:04 9 A. I -- I don't have any idea. I mean my -- my

14:45:10 10 scan of this is that this is a contract between NTSP

14:45:16 11 and med -- or Harris.

14:45:24 12 Q. Was Harris Methodist select providing services

14:45:26 13 to Aetna during this time period?

14:45:30 14 A. Harris Methodist was providing services to

14:45:34 15 Aetna members under a contract but this is not that

14:45:38 16 contract.

14:45:38 17 Q. Do you know whether or not this contract was

14:45:40 18 used to service Aetna members?

14:45:42 19 A. I don't know.

14:45:44 20 Q. Would Dr. Jagmin know that?

14:45:48 21 A. I don't know.

14:45:50 22 Q. Well who would at Aetna would know that?

14:46:04 23 A. Does this say Aetna anywhere? I mean I -- I'm

32

14:46:14 1 Q. Well I'm trying to get the correlation too.

14:46:18 2 So my question is who at Aetna would know whether or

14:46:20 3 not this contract was used to service Aetna patients?

14:46:24 4 A. And without seeing the specific reference to

14:46:28 5 Aetna, I don't know if anyone at Aetna will know the

14:46:32 6 answer.

14:46:32 7 Q. Well who would know if it was -- was or was

14:46:36 8 not used? That's the question.

14:46:46 9 A. Then I would have to say that Dr. Jagmin would

14:46:52 10 know. Or not know.

14:46:56 11 Q. Let me show auto document I'm marking as

14:46:58 12 Exhibit 31 owe 8. . Can you tell me what that is,

14:49:08 13 please? Can you tell me what this is, please?

14:49:10 14 A. This is a contract between Aetna and Harris

14:49:16 15 Methodist select for a risk arrangement.

14:49:26 16 Q. And do you know what conversations, if any,

14:49:30 17 Aetna people had with NTSP concerning this?

14:49:36 18 MS. BRUMBAUGH: Objection to the form of

14:49:36 19 the question.

14:49:38 20 MR. BLOOM: Join.

14:49:44 21 A. I'm not aware.

14:49:50 22 Q. Would of this been something that Dr. Jagmin

14:49:52 23 would have dealt with?

14:50:02 24 A. Yes.

14:50:04 25 Q. And you're aware, are you not, that this

33

14:50:08 1 particular notice of contract offer became apoint of

14:50:12 2 litigation between NTSP and select?

14:50:14 3 A. Yes.

14:50:14 4 Q. And Dr. Jagmin would have handled those

14:50:16 5 conversations?

14:50:16 6 A. Yes.

14:50:24 7 Q. Do you know how many of those conversations he

14:50:26 8 had?

14:50:26 9 A. Do I not.

14:50:42 10 Q. Let me show you Exhibit 31 owe nine. . Tell

14:50:56 11 me what this is, please.

14:51:48 12 A. This appears to be the contract between Harris

14:51:54 13 Methodist an the select providers.

14:51:56 14 Q. Okay. Do you know what conversations Aetna

14:51:58 15 had with NTSP about this contract?

14:52:02 16 A. I do not.

14:52:04 17 Q. Is that something Dr. Jagmin would know?

14:52:06 18 MS. BRUMBAUGH: Object to the form of the

14:52:14 19 question.

14:52:14 20 A. I'm not aware of any conversations.

14:52:16 21 Q. Do you know whether or not Dr. Jagmin had

14:52:20 22 conversations with NTSP on this topic?

14:52:22 23 A. I do not.

14:52:28 24 Q. Is this a risk arrangement?

14:52:32 25 A. Appears to be a risk arrangement, yes.

34

14:52:34 1 Q. What involvement did Aetna have with this risk

14:52:38 2 arrangement prior to the time of its being sent out?

14:52:48 3 MS. BRUMBAUGH: Object to the form of the

14:52:48 4 question.

14:52:50 5 MR. BLOOM: Join.

14:53:00 6 A. I don't know.

14:53:04 7 Q. Is that something Dr. Jagmin would know?

14:53:06 8 A. Yes.

14:53:06 9 Q. Don't need to be a broken record but I think I

14:53:10 10 need to memorialize this on the record. . Let me show

14:53:20 11 you what I'm marking as Exhibit 3110 and ask you to

14:53:24 12 identify that, please.

14:54:06 13 A. This looks like an agreement between

14:54:08 14 participating physicians and Harris Methodist select.

14:54:16 15 Q. Concerning the Aetna PPO?

14:54:18 16 A. Concerning the perform PO.

14:54:22 17 Q. Do you know what conversations Aetna had with

14:54:24 18 NTSP about this contract?

14:54:26 19 A. No.

14:54:26 20 MS. BRUMBAUGH: Object to the form of the

14:54:26 21 question.

14:54:30 22 A. No.

14:54:32 23 Q. Is Dr. Jagmin a person that would know?

14:54:36 24 MS. BRUMBAUGH: Objecting the form of the

14:54:38 25 question.

35

14:54:38 1 A. I don't have any idea.

14:54:40 2 Q. Who would know based on your knowledge of the

14:54:44 3 organization?

14:54:44 4 A. If there were discussions related to NTSP, Dr.

14:54:48 5 Jagmin would know. I just -- I don't know if there

14:54:50 6 were any discussions related to NTSP.

14:55:18 7 Q. Let me show you Exhibit 3111. And ask if you

14:55:24 8 would identify that, please.

14:56:30 9 A. Looks like a summary proposal regarding

14:56:36 10 multiple products for Aetna members.

14:56:40 11 Q. Is this a proposal concerning a risk

14:56:44 12 arrangement?

14:56:44 13 A. There are risk components and fee for service
14:56:50 14 components.

14:56:50 15 Q. And does the proposed risk arrangement or
14:56:54 16 download the risk to Aetna rescheme?

14:57:00 17 MR. BLOOM: Objection vague term download
14:57:06 18 to the rescheme. Not at all sure what it means in this
14:57:34 19 context.

14:57:34 20 A. I can't speak to the intent of this proposal.

14:57:42 21 Q. This is the type of proposal -- I mean this is
14:57:46 22 a proposal that's directed to Aetna products is it not?

14:57:50 23 A. It is.

14:57:52 24 Q. Okay.

14:57:52 25 A. From my read of this, yes.

36

14:57:54 1 Q. And typically this kind of a contract would be
14:57:58 2 discussed would it not by Aetna?

14:58:08 3 A. It is unclear to me in looking at this
14:58:12 4 document for the first time whether this document came
14:58:14 5 from Aetna or this document came from Harris Methodist
14:58:20 6 select and I can't speak to -- it looks like it regards
14:58:26 7 Aetna members, but whether this was a proposal that
14:58:30 8 Aetna was putting in front of people or this was a
14:58:34 9 proposal Harris Methodist was putting in front of

14:58:36 10 individuals, I can't speak to that.

14:58:42 11 Q. Is this something Dr. Jagmin would have to

14:58:44 12 address?

14:58:44 13 A. Sure.

39

15:04:32 24 Q. Okay. Does that lead tout conclusion that

15:04:36 25 somebody at Aetna probably would have been involved in

40

15:04:38 1 the discussion of this proposal?

15:04:46 2 A. It would.

15:04:48 3 Q. That would probably be Dr. Jagmin?

15:04:54 4 THE COURT REPORTER: Yes?

15:04:54 5 A. Yes.

44

15:12:36 16 Q. So whatever discussions went on between Dr.

15:12:38 17 Jagmin and NTSP about the need for an audit or MSM

15:12:42 18 difficulties, Dr. Jagmin is the person we should be

15:12:46 19 asking?

15:12:46 20 A. Yes. Because I don't have knowledge.

45

15:13:52 5 Q. Okay. Going back if we can to Exhibit 3112

15:13:58 6 and this is now that I understand that you didn't come

15:14:00 7 until after this maybe I'm barking up the wrong tree.

15:14:04 8 But any changes in the risk reimbursement structure

15:14:08 9 would that be something Dr. Jagmin would know?

15:14:10 10 MS. BRUMBAUGH: Object to the form of the

15:14:12 11 question.

15:14:14 12 A. If there is knowledge, Dr. Jagmin would know.

46

15:16:04 11 Q. Let me show you Exhibit 3113. Can you tell me

15:16:28 12 what this is?

15:16:30 13 A. This is the agreement between NTSP and Aetna.

15:16:46 14 Q. Okay. And were you involved in this contract?

15:16:54 15 A. Not in the negotiation of this contract, no.

15:16:56 16 Q. All right. Was that something handled by Dr.

15:17:02 17 Jagmin?

18 A. Yes.

47

15:17:52 8 Q. Okay. Again, my usual question. If I wanted

15:17:58 9 to know the details of what was said as this contract

15:18:02 10 was worked up, is that something I should be talking to

15:18:06 11 Dr. Jagmin about?

15:18:06 12 A. Yes.

48

15:18:50 3 Q. Well, here I'll just ask the question. What

15:18:54 4 was the first conversation that Dr. Jagmin had with

15:18:58 5 NTSP about this contract?

15:18:58 6 MS. BRUMBAUGH: Object to the form of the

15:19:02 7 question.

15:19:04 8 A. I -- I can't answer regarding any of the

15:19:06 9 verbal conversations.

15:19:08 10 Q. Any other verbal conversations?

15:19:10 11 A. I can't answer those. I can only answer

15:19:16 12 according to what I have in files.