UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of NORTH TEXAS SPECIALITY PHYSICIANS, a corporation.	Docket No. 9312

COMPLAINT COUNSEL'S RULE 3.24 SEPARATE STATEMENTS OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Rule of Practice 3.24, and in support of its motion for summary decision, Complaint Counsel submits this statement of material facts as to which there is no genuine issue.

A. NTSP' actions directly affect interstate commerce

1. [redacted] are national insurers, headquartered outside Texas, who sell policies throughout the United States.

[redacted] http://www.unitedhealthcare.com/WhatWorksForYou/0,1456,pageID%3D101,00.html http://www.aetna.com/history/celebrating_150yrs.htm http://www.prnewswire.com/cgi-bin/micro_stories.pl?ACCT=165050&TICK=CI1&STORY=/www/story/02-25-2004/0002116362&EDATE=Feb+25,+2004

2. NTSP negotiates or contracts with [redacted]; each of which sells insurance policies to corporations or employees located in the Fort Worth area. Some of these employers are large national and multinational corporations, with local operations in Dallas.

3. [redacted] largest employers include [redacted]

[redacted] and [redacted]. FTC-NTSP-[redacted]-00072-75 **[Tab 27]**.

4. [redacted] operates throughout the United States and the world, with manufacturing plants located in [redacted], and worldwide sales of [redacted] http://www.alconlabs.com/corporate/alcon_glance.jhtml.

5. [redacted] large customers include [redacted] FTC-NTSP-[redacted]-00072-75 **[Tab 27]**.

6. Physician members of NTSP routinely receive payments from out-of-state insurance companies, including the federal Medicare and Medicaid programs. Dr. Paul Grant, a member of NTSP's Board and Chairman of its Finance Committee, testified that, [redacted] Grant dep. at 116-17 **[Tab 1]**.

7. Dr. Grant's testimony shows the close interrelationship between private and federal insurance:

[redacted]

[redacted]

Grant dep. at 116-17 **[Tab 1]**.

8. [redacted]

[redacted]McCallum dep. at 167-68; Vance dep. at 297 **[Tabs 5 and 6]**.

9. NTSP provided a [redacted]

[redacted]This data shows [redacted]

[redacted]For example, [redacted]

[redacted]

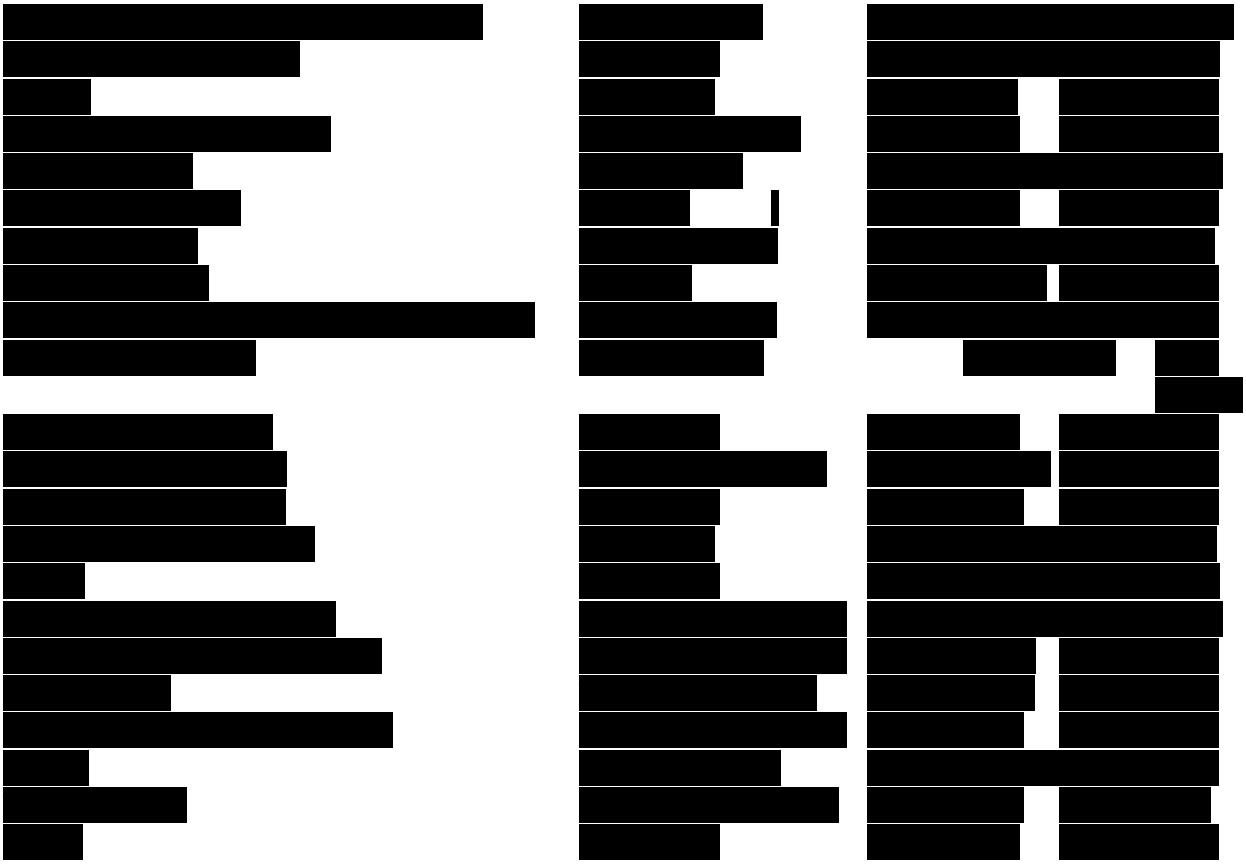

Exhibit 1151 (NTSP 083263-96) **[Tab 28]**.

10. The physician members of NTSP likewise make purchases or use equipment

manufactured or sold outside of Texas. Dr. Jack McCallum, a neurosurgeon who has served as a Board member and Vice President of NTSP, testified that [redacted] He also testified [redacted] McCallum dep. at 162-66 **[Tab 9]**.

11. Dr. Grant, also a Board member, testified that [redacted] Grant dep. at 115-16 **[Tab 10]**.

12. [redacted]

13.. Dr. William Vance, a former President of NTSP, testified that [redacted]. Vance dep. at 300-01 **[Tab 12]**.

B. NTSP is a corporation organized to carry on business for the profit of its members.

14. A major function of NTSP is to enter into contracts with health insurance companies. FTC Ex. 1000 **[Tab 31]** at NTSP 000029, NTSP 00032-34, NTSP 00038-39

15. Dr. Karen Van Wagner testified: [redacted] Van Wagner Investigation Hearing, August 29, 2002 at 10 **[Tab 13]**.

16. NTSP was created for the purpose of negotiating contracts on behalf of its physicians. Dr. John Johnson testified that [redacted] Johnson dep. at 10-11 **[Tab 14]**.

17. [redacted] *See* Ex. 1070 at [redacted] 001010 [redacted]; s*ee also* Ex. 1027 at NTSP 002876; FTC Ex. 1037 at NTSP 022341-342. *See also* [redacted] 000018 [redacted] **[Tabs 32, 33, 34, 35]**.

18. An [redacted] from Dr. Vance (President of NTSP) notes that [redacted] and goes on to report that [redacted] FTC-NTSP-[redacted] 009493 **[Tab 53]**.

19. Dr. Vance reported to members that NTSP had [redacted] even though [redacted] would be paying a higher price for NTSP doctors. Ex. 1129 at FTC-NTSP-[redacted]-009054 (Restricted Confidential) **[Tab 30]**.

20. Minutes of a 2001 Medical Executive Committee meeting [redacted]. NTSP 045646-48. This document, dated [redacted] **[Tab 52]**

21. Dr. Deas explained [redacted] and said: [redacted] Deas dep. at 87 **[Tab 15]**.

22. Jim Mosley and Thomas Quirk testified that [redacted]. Mosley dep. at 91; Quirk at 104-105 **[Tabs 16 and 17]**.

23. NTSP termed its member physicians' participation in the [redacted] arrangement because [redacted] Exhibit 1103 at NTSP 004919 **[Tab 36]**.

24. The PCP Quarterly Forum Minutes states: [redacted] Exhibit 1081 at NTSP 015222 **[Tab 37]**.

25. In 2000, NTSP negotiated price terms with [redacted], refusing to messenger [redacted] contract offers to NTSP's member physicians until [redacted] substantially increased its offered rates. Exhibits 9 and 12 **[Tabs 38 and 39]**.

26. NTSP provides tangible benefits to its members, such as professional liability insurance, publications, and practice management programs. *See* Deas dep. at 104 **[Tab 21]**.

27. NTSP claims that its activities are intended to improve the efficiency of its participating physicians' individual practices. Report of Robert S. Maness, February 13, 2004 at 39-46.

28. NTSP, though its Board members and officers Dr. Vance and Dr. Deas, has admitted that [redacted] Vance dep. at 312-13; Deas dep. at 97 **[Tab 19, 23]**.

C. NTSP physicians are "members" of the organization

29. NTSP physicians pay dues and elect the Board of Directors. NTSP physicians also meet periodically in "general membership meetings" to discuss matters in the common interest of all physicians, which sometimes includes the negotiation of payor contracts. Hollander dep. at 34, 21-23 **[Tabs 24 and 25]**.

30. NTSP regularly reports to its physician "members" by fax or mail or in meetings, including reports on matters relating to the business interests of the physicians (such as the price terms of payor contracts). FTC Exhibit 1030 (NTSP 022453-55); FTC Exhibits 1012, 1010, and 1011 (NTSP 012599, NTSP 005285, NTSP 005281); [redacted]000004; NTSP 069204; [redacted]000017 **[Tabs 40, 49, 50, 51, 42, 45, and 43]**.

31. An NTSP communication states to "NTSP members" that "[redacted] FTC Exhibit 1030 **[Tab 40]**.

32. Another NTSP communication to physicians states that [redacted] FTC Exhibit 1063 **[Tab 41]**.

33. Letters from physicians to [redacted] designated NTSP as their agent. FTC-NTSP-[redacted] 000234-273 **[Tab 44]**

34. NTSP terminated its member physicians' participation in the [redacted] arrangements effective on or about December 7, 2000. NTSP 008010-15 **[Tab 46]**.

35. In a fax alert, the NTSP Board informed NTSP members that [redacted]. FTC Exhibit 1103 at NTSP 004919-921 **[Tab 47]**.

36. In a fax alert to NTSP members, NTSP's Executive Director, Karen Van Wagner, reported that: [redacted] FTC Exhibit 23 at 005278 **[Tab 48]**.

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

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PROPOSED ORDER

Having considered Complaint Counsel Memorandum in Support of its Partial Summary Decision and the Separate Statement of Material Facts as to Which There is No Genuine Issue,

IT IS HEREBY ORDERED that Complaint Counsel's Motion for Partial Summary Decision is granted.

_____
D. Michael Chappell
Administrative Law Judge

Date:_____