

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

COMMISSIONERS: Deborah Platt Majoras, Chairman  
Orson Swindle  
Thomas B. Leary  
Pamela Jones Harbour  
Jon Leibowitz

In the Matter of

North Texas Specialty Physicians,  
a corporation.

Docket No. 9312

**RESPONDENT'S NOTICE OF APPEAL**

Pursuant to Section 3.52(a) of the Commission's Rules of Practice, Counsel for Respondent North Texas Specialty Physicians ("NTSP") hereby gives notice that it appeals against Complaint Counsel from the Initial Decision and Order entered in this proceeding on November 8, 2004, in its entirety, with the exception of those parts of the Initial Decision determining that:

- (1) NTSP cannot and does not bind any participating physicians to non-risk contracts (*see, e.g.*, F. 71 and Initial Decision at page 65);
- (2) NTSP's participating physicians can and do contract with health plans outside of NTSP (*see, e.g.*, F. 72, 356);
- (3) there are no agreements between one or more NTSP participating physicians to participate in or reject a non-risk payor offer (*see, e.g.*, F. 73 and Initial Decision at pages 68-69);
- (4) NTSP's participating physicians do not consult with each other when making decisions on non-risk payor contracts and do not know what any other physician

will do in response to a non-risk payor offer (*see, e.g.*, F. 74-75 and Initial Decision at pages 68-69);

(5) NTSP's participating physicians do not consult with each other when responding to the poll and do not know how any other specific physician or physician group responded to the poll (*see, e.g.*, F. 92, 95 and Initial Decision at pages 68-69);

(6) Complaint Counsel was required to define and prove a relevant market (*see, e.g.*, Initial Decision at pages 61-63);

(7) Complaint Counsel's expert did not attempt to prove a relevant market (*see, e.g.*, Initial Decision at page 63);

(8) the concerted action requirement of Section 1 of the Sherman Act is not automatically satisfied merely because an organization of otherwise competing physicians is involved (*see, e.g.*, Initial Decision at page 67);

(9) payors (including United, Aetna, and Cigna) offered NTSP the same rates or lower rates than offered to other IPAs or in direct offers to physicians (*see, e.g.*, F. 116, 170-71, 188, 217, 290, 328 and Initial Decision at pages 82-83);

(10) there was insufficient evidence to establish that the rates United, Cigna, and Aetna agreed to with NTSP were uniformly higher than rates health insurance payors offered to other IPAs or directly to other physicians (*see, e.g.*, Initial Decision at pages 82-83);

(11) payors (including United, Aetna, and Cigna) were repeatedly the subject of governmental investigations and sanctions and NTSP was involved in reporting the payors' conduct to governmental authorities (*see, e.g.*, F. 192-94, 256-58, 357-63);

(12) NTSP's right to refuse to deal with payors should not be restricted (*see, e.g.,* Initial Decision at pages 88-90);

(13) NTSP's right to avoid risky contractual situations or the risk of contravening state or federal law should not be restricted (*see, e.g.,* Initial Decision and Order at pages 88-90, 94).

(14) NTSP's right to communicate factual information and objective comparisons should not be restricted (*see, e.g.,* Initial Decision and Order at page 94);

Dated: December 3, 2004

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2004, I caused a copy of the foregoing document to be served upon the following persons:

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and by e-mail upon the following: Theodore Zang (tzang@ftc.gov) and Jonathan Platt (jplatt@ftc.gov).

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