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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

[PUBLIC]

IN THE MATTER OF NORTH TEXAS SPECIALTY PHYSICIANS, A CORPORATION.

Docket No. 9312

**RESPONDENT NORTH TEXAS SPECIALTY PHYSICIANS' RESPONSE TO EXPEDITED MOTION
OF COMPLAINT COUNSEL FOR AN ORDER COMPELLING COMPLIANCE WITH
INTERROGATORIES OR EXCLUDING RELATED EVIDENCE; AND RESCHEDULING
DEPOSITION OF DR. KAREN VAN WAGNER**

Respondent North Texas Specialty Physicians ("Respondent") files this response to Complaint Counsel's Motion to Compel. In support, Respondent shows the following:

I.

Background

Complaint Counsel complains about Respondent's objections and responses to its first set of interrogatories. Complaint Counsel's interrogatories consist of (1) eight interrogatories asking Respondent to identify specific documents out of the over 100,000 documents produced in this proceeding and asking Respondent to give an explanation of those documents with regard to contentions it has never made in its pleadings or briefs,¹ (2) an interrogatory seeking information from a database that has already been produced to Complaint Counsel,² (3) an interrogatory seeking the identities of other organizations with which Respondent competes with regard to fee for service contracts, although Respondent does not compete for such contracts in the usual

¹ See Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians, pp. 1-7, attached as Appendix I to Complaint Counsel's Motion to Compel.

² See Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians, p. 7, attached as Appendix I to Complaint Counsel's Motion to Compel.

sense of the word,³ (4) an interrogatory regarding communications with payors,⁴ although Respondent has already produced all such communications, and (5) a listing of patient zip codes,⁵ which is duplicative of Complaint Counsel's prior document requests and for which all responsive documents have already been produced. Respondent's objections are based on the fact that Complaint Counsel's interrogatories are overly broad, unduly burdensome, and seek privileged information, and Respondent has already tendered documents that contain the information sought by the interrogatories. Respondent also objects to Complaint Counsel's effort to make Respondent identify and explain documents regarding contentions that have not been made by Respondent in its pleadings and briefs.

Furthermore, Respondent has made a good faith effort to answer Complaint Counsel's interrogatories, despite the nature of them. Although Complaint Counsel only attaches Respondent's objections to the interrogatories to their motion, Respondent also provided an answer to each of those interrogatories.⁶

³ See Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians, p. 7, attached as Appendix I to Complaint Counsel's Motion to Compel.

⁴ See Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians, pp. 7-8, attached as Appendix I to Complaint Counsel's Motion to Compel.

⁵ See Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians, p. 8, attached as Appendix I to Complaint Counsel's Motion to Compel.

⁶ A copy of Respondent's Response to Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians is attached as Exhibit A.

II.

Argument and Authorities

A. Complaint Counsel's interrogatories are overly broad and unduly burdensome.

Complaint Counsel states that these interrogatories are "simple contention interrogatories."⁷ They are not. Courts have noted that contention interrogatories, more than most, are susceptible to abuse.⁸ These interrogatories demonstrate this problem, calling for substantial amounts of time and money to be spent re-producing documents already in the hands of Complaint Counsel, as well as asking Respondent and its counsel to identify and explain documents supporting contentions Respondent has never made.

Complaint Counsel attempts to compare its interrogatories with those of Respondent. The interrogatories are not comparable. In response to specific contentions made by Complaint Counsel, Respondent merely requested a list of alleged co-conspirators and a description of the anti-competitive conduct alleged.⁹ This information was vital to Respondent's identifying the facts that form the basis for Complaint Counsel's contentions. Also, these basic facts sought by Respondent in its interrogatories had never been provided to Respondent in any form.

Here, Complaint Counsel does not seek to have Respondent identify documents that support contentions made by Respondent, but instead, seeks to have Respondent identify documents regarding contentions Respondent has not even made. As Complaint Counsel admits, the contention interrogatories seek the identification of documents related to contentions

⁷ Expedited Motion of Complaint Counsel for an Order Compelling Compliance with Interrogatories or Excluding Related Evidence; and Rescheduling Deposition of Dr. Karen Van Wagner at p. 1.

⁸ See *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 187 (D. Kan. 1997) (indiscriminate use of interrogatories likely to cause delay and unreasonable expense of time, energy, and money); *Lawrence v. First Kansas Bank & Trust Co.*, 169 F.R.D. 657, 663 (D. Kan. 1996) (stating contention interrogatories are susceptible to abuse).

⁹ See Exhibit C to North Texas Specialty Physicians' Motion to Compel Responses to Interrogatories, at p 3, Interrogatories 1 and 2.

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“that are *likely* to be made” by Respondent.¹⁰ And any documents that support these “likely” contentions have already been produced to Complaint Counsel through earlier discovery.

Furthermore, unfair surprise is not an issue in this proceeding, as Complaint Counsel suggests. The Scheduling Order requires Respondent to provide Complaint Counsel with copies of all exhibits by March 9, 2004.¹¹ The final hearing is not scheduled until April 28, 2004. Almost two months before the hearing, Complaint Counsel will be aware of all documents on which Respondent intends to rely at the hearing of this matter.

1. **It is unduly burdensome for Respondent to answer Interrogatories 1-12 because they are repetitious of Complaint Counsel’s previous discovery requests.**

Eight of Complaint Counsel’s interrogatories ask Respondent to identify specific documents which have already been provided to Complaint Counsel through responses to Complaint Counsel’s document requests. The remaining four request information already provided through responses to these document requests. When an interrogatory asks a party to identify documents that have already been produced, and there was no complaint that the previous document production was deficient, a party cannot be compelled to re-identify those documents produced.¹² In *Evans v. Atwood*, a case that raised an issue almost identical to the present issue, the court refused to require a party to answer an interrogatory requesting that it identify all documents the party contended were relevant.¹³ In *Evans*, the party resisting discovery, like Respondent, had produced tens of thousands of documents in response to

¹⁰ Expedited Motion of Complaint Counsel for an Order Compelling Compliance with Interrogatories or Excluding Related Evidence; and Rescheduling Deposition of Dr. Karen Van Wagner at p. 3.

¹¹ Scheduling Order, p. 2.

¹² *Evans v. Atwood*, 177 F.R.D. 1, 8-9 (D. D.C. 1997).

¹³ *Id.*

document requests.¹⁴ Furthermore, like Complaint Counsel, the party seeking an order to compel in *Evans* was neither complaining of the production that occurred, nor contending that any documents had not been produced.¹⁵ The court in *Evans* refused to require the party to answer the interrogatory and identify the documents requested because to require such action would merely be an “academic exercise.”¹⁶ Like the party resisting discovery in *Evans*, Respondent should not be required to go through the tens of thousands of documents it has already produced and the thousands of documents produced by third parties to respond to Complaint Counsel’s interrogatories because to do so would impose unnecessary expense and burden upon Respondent.

Each of the documents asked to be identified in the interrogatories are in Complaint Counsel’s possession because they have already been produced in response to Complaint Counsel’s document requests. Indeed, some of the interrogatories are almost identical to the document requests served by Complaint Counsel and for which Respondent has produced all responsive documents.¹⁷ Respondent properly produced documents in response to the original request as they are kept in the ordinary course of business, as is permitted under the FTC Rules of

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Compare Complaint Counsel’s First Request to Respondent for Production of Documents and Things, attached as Exhibit B, at p. 22, Request No. 84 (requesting documents related to efficiencies and effectiveness of participating physicians), p. 14, Request No. 27 (requesting documents concerning competitors), p. 12, Request No. 16 (requesting all documents related to contracts including communications with payors), and p. 14, Request No. 28 (requesting documents containing patient zip code data), with Complaint Counsel’s Interrogatories to Respondent North Texas Specialty Physicians, attached as Appendix I to Complaint Counsel’s Motion to Compel, at p. 4-7, Interrogatories Nos. 1-8 (seeking identification and explanation of documents related to efficiencies and effectiveness), p. 7, Interrogatory No. 10 (seeking information regarding competitors), p. 7-8, Interrogatory No. 11 (seeking identification of communications with payors), and p. 8, Interrogatory No. 12 (seeking patient zip codes).

Practice in Adjudicative Proceedings.¹⁸ Complaint Counsel is now trying to circumvent this permissible form of production by using interrogatories to compel response by specification.

Complaint Counsel suggests that it would not be burdensome for Respondent to specify these documents because they are “known or readily accessible” to Respondent. The burden is no less great on Respondent than on Complaint Counsel. Complaint Counsel has the exact same set of over 100,000 documents as Respondent. Respondent cannot reach into this mass of documents that have been requested by Complaint Counsel and produced by Respondent and third parties to find one containing specific information any more quickly than Complaint Counsel.¹⁹ Specifically, no documents are known by Respondent to be organized by factual contentions that have not even been made by Respondent, as requested by Interrogatories 1-8.²⁰

As to the remaining four interrogatories, any further response than already provided to Complaint Counsel would also be burdensome. In response to Interrogatory 9, Respondent has identified a “flat file” CD containing all of this specific information. Respondent cannot be any more precise about the location without performing the same review of the CD as Complaint Counsel can do. Interrogatory 10 asks Respondent to provide information on competitors for fee-for-services contracts. Although Respondent does not believe it is in competition (in the usual sense of the word) for the provision of fee-for-service medical services, Respondent has identified all similar entities known to it in the surrounding areas. Interrogatories 11 and 12 ask Respondent to detail all communications with payors and provide patient zip code information, respectively. The payor communications themselves (which number in the hundreds or more

¹⁸ FTC Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.37(a).

¹⁹ Affidavit of Gregory D. Binns, attached as Exhibit C.

²⁰ *Id.*

over the six-year time frame identified by Complaint Counsel) and patient zip codes were requested and received by Complaint Counsel in previous discovery. Retrieving the requested details from those documents would require Respondent to go through the thousands of documents produced – again. Complaint Counsel can just as easily review its set of documents for the information it originally requested to receive in that set of documents.

Respondent also made a general objection to Complaint Counsel’s request that Respondent provide names, titles, and last known addresses for any persons identified in response to interrogatories. Respondent has already provided this information with regard to relevant persons in its Initial Disclosures. For any other persons, Respondent does not have any more information on these persons than is already contained in the files produced; Complaint Counsel can perform a search to find last known addresses just as easily as Respondent – possibly more so, since Complaint Counsel knows the relative importance of its requests and Respondent does not.

2. It is overly broad and unduly burdensome to request that Respondent specifically identify all documents supporting “likely” contentions created by Complaint Counsel in Interrogatories 1-8.

Interrogatories 1-8 contain “likely” contentions written by Complaint Counsel and ask Respondent to identify and explain all documents supporting these hypothetical contentions which Respondent has not even made. Courts have found similar requests for identification of every document supporting a certain fact or allegation to be overly broad and unduly burdensome even when the contentions have actually been those of the responding party.²¹ To answer these interrogatories would require a time-consuming analysis, search, description of details, and

²¹ *Eane Corp. v. Auburn*, 176 F.R.D. 433, 437 (D. Mass. 1997); *Lawrence*, 169 F.R.D. at 661-63.

commentary by Respondent's counsel.²² The burden of doing so outweighs the benefit; document production and depositions are better suited for these types of inquiries to the extent the answers are not privileged.²³ The request is especially burdensome here where Respondent's own contentions do not form the basis of the interrogatory, implicating a higher burden and a questionable benefit.²⁴ Complaint Counsel should not be allowed to create contentions and then ask Respondent to re-evaluate all of its documents to determine if there is support for Complaint Counsel's own theory.

B. Complaint Counsel's interrogatories request information protected by the work product privilege and otherwise beyond the scope of reasonable discovery.

Identification of all specific documents believed to support possible defense theories and an explanation of what those documents mean and why they were chosen are requested by Complaint Counsel. Interrogatories 1-8 basically ask Respondent and its counsel to marshal Respondent's evidence at trial and provide commentary which will reveal trial strategy, including counsel's view of the case and the identity of documents and facts counsel believes are significant. This type of information is beyond the scope of reasonable discovery and also protected by the

²² Affidavit of Gregory D. Binns, attached as Exhibit C.

²³ *Hiskett*, 180 F.R.D. at 404; *IBP, Inc. v. Mercantile Bank*, 179 F.R.D. 316, 321 (D. Kan. 1998) (other discovery procedures, like document production, better address a need for detail); *Lawrence*, 169 F.R.D. at 651-53 (significant and unreasonable burden when responses would include inventory of evidence, counsel's review of facts, and commentary to support counsel's evaluation); *In re Ind. Org. Antitrust Litigation*, 168 F.R.D. 651, 654 (D. Kan. 1996) (even under liberal discovery rules, counsel is not required to marshal all of its factual proof, especially if already available in discovery previously conducted).

²⁴ Contention interrogatories are supposed to be used to ask a party what it contends or to state facts that are the basis for its own contentions. *Everett v. USAir Gp., Inc.*, 165 F.R.D. 1, 3 (D. D.C. 1995). Further, contention interrogatories not based on Respondent's own contentions are similar to contention interrogatories based on hypothetical fact situations, which courts have refused to allow. *Kendrick v. Sullivan*, 125 F.R.D. 1, 3 (D. D.C. 1989).

work product privilege.²⁵ The information requested does not merely “clarify” Respondent’s defenses as Complaint Counsel suggests. The information requested requires Respondent and its counsel to provide impressions and evaluations as well as commentary on contentions set forth by Complaint Counsel, not itself. Requiring response to what is essentially Complaint Counsel’s “theories” of the possible defense is outside the scope of reasonable discovery.

Importantly, as discussed previously, the Scheduling Order in this proceeding assures that Complaint Counsel will not be unfairly surprised by any information similar to that requested. These interrogatories require Respondent, after having already responded to Complaint Counsel’s 90-plus requests for production with tens of thousands of documents, to re-examine all of these documents, as well as other documents produced by third parties, and cull out the most pertinent to Complaint Counsel’s contentions so that Complaint Counsel will not have to do so. Discovery was not meant to provide opposing counsel a free look at trial preparation the other side has not even done – Complaint Counsel should be required to do its own work when the necessary information has been previously provided.²⁶

C. Even if Complaint Counsel’s requests are found to be proper, barring documents from use at trial is an inappropriate remedy.

As discussed above, all of Complaint Counsel’s interrogatories are improper or have already been fully answered. But if the Administrative Law Judge orders Respondent to respond, the possible remedy requested by Complaint Counsel – that any documents not identified within

²⁵ *IBP, Inc.*, 179 F.R.D. at 322 (request for counsel to identify facts he would rely on at trial was beyond scope of discovery); *Eane Corp.*, 176 F.R.D. at 437 (request for identity of documents that would be used in course of litigation implicates work product); see also *In re Ashworth, Inc. Sec. Litigation*, 213 F.R.D. 385, 388 (S.D. Cal. 2002) (asking counsel to connect particular witnesses with factual contentions would impermissibly reveal counsel’s opinions of relative importance and relation to legal theories and conclusion); *United States v. Dentsply Int’l, Inc.*, 187 F.R.D. 152, 155 (D. Del. 1999) (interrogatory proper only because it didn’t require counsel to reveal his view of the case of identification of which facts he considered significant).

²⁶ *In re Ashworth, Inc. Sec. Litigation*, 213 F.R.D. at 390.

five days be excluded from evidence – is inappropriate. In light of counsel for Respondent's affidavit and above explanation, any identification of the requested documents will take weeks, not five days.²⁷ It is also important that Respondent has not done anything wrong.²⁸ Respondent has provided good faith responses to Complaint Counsel's burdensome discovery requests. Respondent has not violated any discovery orders of the Administrative Law Judge. Further, Respondent has provided answers to the interrogatories at issue here to the extent they were not objectionable, and all objections were timely and proper.

Further, these documents are ones that Complaint Counsel has already seen; all these documents are currently in Complaint Counsel's possession. The remedy of exclusion is inappropriate when Respondent has not made any effort to hide responsive documents. In fact, Respondent has withheld nothing. Complaint Counsel, after receiving voluminous discovery from Respondent as required by the specifications sent by Complaint Counsel, now asks Respondent to go back through what was requested and determine what is the most important. This is beyond the scope of reasonable discovery, but if the Administrative Law Judge does compel response, Respondent certainly should not be punished by exclusion of potentially exculpatory evidence already made available to Complaint Counsel.

D. The deposition of Karen Van Wagner should not be postponed.

The deposition of Karen Van Wagner has been scheduled for weeks, and she has already been deposed twice in this matter. In fact, her deposition was scheduled to last for two entire

²⁷ Affidavit of Gregory D. Binns, attached as Exhibit C.

²⁸ Complaint Counsel asserts that Respondent has not complied with the requirement for initial disclosures. Respondent has complied. Initial disclosures were provided by Respondent on October 15, 2003, as well as revised disclosures on January 2, 2004. Respondent is under a duty to supplement those initial disclosures only if the supplemental information has not already been provided to Complaint Counsel in the discovery process. 16 C.F.R. § 3.31(e)(1). Respondent is not aware of any supplemental information that has not been provided.

days, January 20-21, at Complaint Counsel's request.²⁹ Although Complaint Counsel contends in its motion that "Dr. Van Wagner is the foremost repository of relevant information within NTSP and is likely to be NTSP's key witness," Complaint Counsel advised Respondent on January 18, 2004 that it would no longer need two days to take the deposition. Instead, it would only need one day, and the deposition would no longer be videotaped. Such action on the part of Complaint Counsel hardly supports its argument that the deposition of Dr. Van Wagner is of utmost importance to Complaint Counsel's case.

Furthermore, Complaint Counsel states that it wants to take Dr. Van Wagner's deposition near the conclusion of fact discovery. That is exactly when Dr. Van Wagner's deposition is scheduled to take place. Fact discovery closes on January 30, and her deposition is scheduled for January 20.

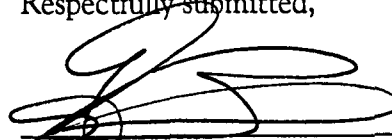
III.

Conclusion

In light of the arguments herein, Respondent requests that the Administrative Law Judge (a) deny in whole Complaint Counsel's Motion to Compel or Exclude Evidence and Reschedule a Deposition and (b) grant and order such further relief to which Respondent may be justly entitled.

²⁹ Complaint Counsel has scheduled Dr. Van Wagner to be deposed individually and as the corporate representative of Respondent who is most knowledgeable regarding certain topics.

Respectfully submitted,



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**ATTORNEYS FOR NORTH TEXAS
SPECIALTY PHYSICIANS**

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CERTIFICATE OF SERVICE

I, Gregory D. Binns, hereby certify that on January 19, 2004, I caused a copy of the foregoing to be served upon the following persons:

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

Hon. D. Michael Chappell (2 copies 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 Federal Express and e-mail)
Donald S. Clark
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue NW
Washington, D.C. 20580

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



Gregory D. Binns

Exhibit A

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF

NORTH TEXAS SPECIALTY PHYSICIANS,
A CORPORATION.

Docket No. 9312

**RESPONDENT'S RESPONSE TO COMPLAINT COUNSEL'S
INTERROGATORIES TO RESPONDENT NORTH TEXAS SPECIALTY PHYSICIANS**

Respondent North Texas Specialty Physicians ("NTSP") submits this its Response (including its previously-made objections) to Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians.

General Objections

1. NTSP objects to Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians to the extent those Interrogatories use terms which vary from normal parlance.
2. NTSP objects to Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians to the extent those interrogatories seek information that is protected by the attorney-client privilege and work product doctrine.
3. NTSP objects to the Definitions and Instructions contained in Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians to the extent those definitions and instructions were objected to by Complaint Counsel in discovery previously served by NTSP in this adjudicative proceeding.
4. NTSP objects to the portion of Definition/Instruction B which seeks to require NTSP to detail what it did in attempting to secure unknown information because it seeks to impose

a burden on NTSP that is greater than that imposed by 16 C.F.R. § 3.35 and because it potentially seeks information that is protected by the attorney-client privilege.

5. NTSP objects to Definition/Instruction O because it is vague, ambiguous, and renders the interrogatories to which it applies, if any, overly broad and unduly burdensome.
6. NTSP objects to Definition/Instruction P because it is ambiguous, overly broad, and renders the interrogatories to which it applies, if any, unduly burdensome.
7. NTSP objects to Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians to the extent such interrogatories exceed the limits ordered by the Administrative Law Judge.

RESPONSES

1. Identify all documents in or subject to the custody or control of NTSP that tend to indicate that the dissemination by NTSP to participating physicians of aggregated data regarding participating physicians' minimum acceptable compensation for fee-for-service medical services was reasonably necessary to the achievement of material improvements in the quality of participating physicians' (a) fee-for-service medical services and (b) other than fee-for-service medical services, and explain in detail how each identified document tends to so indicate.

Objections: Respondent objects to this interrogatory on the grounds that such interrogatory is vague, unreasonably burdensome, and Complaint Counsel have an ample opportunity to make such determinations on their own. Respondent has already produced documents sufficient for Complaint Counsel to make any such determinations. **Response:** Without waiving its objections, Respondent does not know what is meant by "tend to indicate" or "aggregated data";

Respondent does not recall any document produced by Respondent which specifically discusses the stated proposition.

2. Identify all documents in or subject to the custody or control of NTSP that tend to indicate that the dissemination by NTSP to participating physicians of aggregated data regarding participating physicians' minimum acceptable compensation for fee-for-service medical services was reasonably necessary to the achievement of material reductions in the cost of participating physicians' (a) fee-for-service medical services and (b) other than fee-for-service medical services, and explain in detail how each identified document tends to so indicate.

Objections: Respondent objects to this interrogatory on the grounds that such interrogatory is vague, unreasonably burdensome, and Complaint Counsel have an ample opportunity to make such determinations on their own. Respondent has already produced documents sufficient for Complaint Counsel to make any such determinations. **Response:** Without waiving its objections, Respondent does not know what is meant by "tend to indicate" or "aggregated data"; Respondent does not recall any document produced by Respondent which specifically discusses the stated proposition.

3. Identify all documents in or subject to the custody or control of NTSP that tend to indicate that the establishment by NTSP of minimum contract prices for fee-for-service medical services was reasonably necessary to the achievement of material improvements in the quality of participating physicians' (a) fee-for-service medical services and (b) other than fee-for-service medical services, and explain in detail how each identified document tends to so indicate.

Objections: Respondent objects to this interrogatory on the grounds that such interrogatory is vague, unreasonably burdensome, and Complaint Counsel have an ample opportunity to make such determinations on their own. Respondent has already produced documents sufficient for Complaint Counsel to make any such determinations. **Response:** Without waiving its objections, Respondent does not know what is meant by "tend to indicate" and further does not understand that NTSP establishes minimum contract prices for physicians' non-risk fee-for-service medical services; Respondent does not recall any document produced by Respondent which specifically discusses the stated proposition.

4. Identify all documents in or subject to the custody or control of NTSP that tend to indicate that the establishment by NTSP of minimum contract prices for fee-for-service medical services was reasonably necessary to the achievement of material reductions in the cost of participating physicians' (a) fee-for-service medical services and (b) other than fee-for-service medical services, and explain in detail how each identified document tends to so indicate.

Objections: Respondent objects to this interrogatory on the grounds that such interrogatory is vague, unreasonably burdensome, and Complaint Counsel have an ample opportunity to make such determinations on their own. Respondent has already produced documents sufficient for Complaint Counsel to make any such determinations. **Response:** Without waiving its objections, Respondent does not know what is meant by "tend to indicate" and further does not understand that NTSP establishes minimum contract prices for physicians' non-risk fee-for-service medical services; Respondent does not recall any document produced by Respondent which specifically discusses the stated proposition.

5. Identify all documents in or subject to the custody or control of NTSP that tend to indicate that the refusal by NTSP to submit to NTSP physicians offers from payors that do not satisfy minimum contract prices established by NTSP for fee-for-service medical services was reasonably necessary to the achievement of material improvements in the quality of participating physicians' (a) fee-for-service medical services and (b) other than fee-for-service medical services, and explain in detail how each identified document tends to so indicate.

Objections: Respondent objects to this interrogatory on the grounds that such interrogatory is vague, unreasonably burdensome, and Complaint Counsel have an ample opportunity to make such determinations on their own. Respondent has already produced documents sufficient for Complaint Counsel to make any such determinations. **Response:** Without waiving its objections, Respondent does not know what is meant by "tend to indicate" and further does not understand that NTSP establishes minimum contract prices for physicians' non-risk fee-for-service medical services; Respondent does not recall any document produced by Respondent which specifically discusses the stated proposition.

6. Identify all documents in or subject to the custody or control of NTSP that tend to indicate that the refusal by NTSP to submit to NTSP physicians offers from payors that do not satisfy minimum contract prices established by NTSP for fee-for-service medical services was reasonably necessary to the achievement of material reductions in the cost of participating physicians' (a) fee-for-service medical services and (b) other than fee-for-service medical services, and explain in detail how each identified document tends to so indicate.

Objections: Respondent objects to this interrogatory on the grounds that such interrogatory is vague, unreasonably burdensome, and Complaint Counsel have an ample opportunity to make such determinations on their own. Respondent has already produced documents sufficient for Complaint Counsel to make any such determinations. **Response:** Without waiving its objections, Respondent does not know what is meant by "tend to indicate" and further does not understand that NTSP establishes minimum contract prices for physicians' non-risk fee-for-service medical services; Respondent does not recall any document produced by Respondent which specifically discusses the stated proposition.

7. Identify all documents in or subject to the custody or control of NTSP that tend to indicate that the departing by NTSP of NTSP physicians from payor agreements that do not satisfy minimum contract prices established by NTSP for fee-for-service medical services was reasonably necessary to the achievement of material improvements in the quality of participating physicians' (a) fee-for-service medical services and (b) other than fee-for-service medical services, and explain in detail how each identified document tends to so indicate.

Objections: Respondent objects to this interrogatory on the grounds that such interrogatory is vague, unreasonably burdensome, and Complaint Counsel have an ample opportunity to make such determinations on their own. Respondent has already produced documents sufficient for Complaint Counsel to make any such determinations. **Response:** Without waiving its objections, Respondent does not know what is meant by "tend to indicate" and "the departing by NTSP of NTSP physicians from payor agreements" and further does not understand that NTSP establishes minimum contract prices for physicians' non-risk fee-for-

service medical services; Respondent does not recall any document produced by Respondent which specifically discusses the stated proposition.

8. Identify all documents in or subject to the custody or control of NTSP that tend to indicate that the departing by NTSP of NTSP physicians from payor agreements that do not satisfy minimum contract prices established by NTSP for fee-for-service medical services was reasonably necessary to the achievement of material reductions in the cost of participating physicians' (a) fee-for-service medical services and (b) other than fee-for-service medical services, and explain in detail how each identified document tends to so indicate.

Objections: Respondent objects to this interrogatory on the grounds that such interrogatory is vague, unreasonably burdensome, and Complaint Counsel have an ample opportunity to make such determinations on their own. Respondent has already produced documents sufficient for Complaint Counsel to make any such determinations. **Response:** Without waiving its objections, Respondent does not know what is meant by "tend to indicate" and "the departing by NTSP of NTSP physicians from payor agreements" and further does not understand that NTSP establishes minimum contract prices for physicians' non-risk fee-for-service medical services; Respondent does not recall any document produced by Respondent which specifically discusses the stated proposition.

9. Separately for each of the years 1998 thru 2002, or if such data is not available, for the most recent 18-month period for which such data is available (and if such data is not available for 18 months, then for all of such lesser time for which such data is available), using the "flat file" database as referred to in the testimony of Dr. Karen Van Wagner on November 19, 2003, at page 120, list each CPT code used and for each such CPT code

indicate by NTSP division and in total the frequency of use of each CPT code and the number of doctors that used the CPT code.

Objections: Respondent objects to this interrogatory on the grounds that such interrogatory is vague, unreasonably burdensome, and Complaint Counsel have an ample opportunity to make such determinations on their own. Respondent has already produced documents sufficient for Complaint Counsel to make any such determinations. **Response:** Without waiver of its objections, Respondent has tendered or will tender documents in response to this interrogatory.

10. Identify each independent practice association, physician-hospital organization, or similar entity contracting for or on behalf of physicians (other than the physicians in a single practice group) with which NTSP has been in competition for the provision of fee-for-service medical services or other medical services and fully describe the subject, nature, and time period of that competition (e.g., competed with XYZ independent practice association for ABC Insurance Company contract for the provision of PPO medical services and capitated HMO medical services for the year 2000) and the basis of NTSP's knowledge that it was engaged in such competition.

Objections: Respondent objects to this interrogatory on the grounds that such interrogatory is vague, unreasonably burdensome, and Complaint Counsel have an ample opportunity to make such determinations on their own. Respondent has already produced documents sufficient for Complaint Counsel to make any such determinations. **Response:** Without waiving its objections, Respondent does not understand what is meant by the reference to NTSP being "in competition for the provision of [non-risk] fee-for-service medical services." Respondent, however, is aware of the following independent practice associations and physician-hospital organizations which are or have been in existence in the Dallas-Fort Worth metropolitan area:

Columbia IPA, Genesis, System Health Providers, Southwest Physicians' Association, Heritage, Medical Select Management, Health Texas Provider Network, Harris Select, Cook Children's Physicians Network, ASIA, Huguley IPA, Texas Integrated Osteopathic Physicians Association, Jefferson IPA, Cardiac Alliance, Physician Services of Arlington, Specialty Net, Plano IPA, Methodist IPA, American Physicians Network, Unity IPA, Princeton IPA, and Carefirst IPA.

11. Identify each payor with which NTSP communicated relating to the possible, proposed, or actual provision of fee-for-service medical services or other medical services and identify and fully describe the persons engaged in those communications, the subject matter of those communications, and the time period in which those communications occurred (e.g. communications during the period June 1999 thru Dec. 1999 among Mr. A and Ms. B of XYZ insurance and Dr. X and Mr. Y of NTSP relating to the possible provision of PPO medical services and capitated HMO medical services for the year 2000).

Objections: Respondent objects to this interrogatory on the grounds that such interrogatory is vague, unreasonably burdensome, and Complaint Counsel have an ample opportunity to make such determinations on their own. Respondent has already produced documents sufficient for Complaint Counsel to make any such determinations. **Response:** Without waiver of its objections, Respondent has already tendered its payor files which will provide the information sought in this interrogatory.

12. Separately for each zip code in which resides any patient provided care under a capitated care agreement between NTSP and a payor, state the number of patients provided care under each such capitated care agreement in each of the years 1998 thru 2002, or if such data is not available, for the most recent 18-month period for which such data is available

(and if such data is not available for 18 months, then for all of such lesser time for which such data is available).

Objections: Respondent objects to this interrogatory on the grounds that such interrogatory is vague, unreasonably burdensome, and Complaint Counsel have an ample opportunity to make such determinations on their own. Respondent has already produced documents sufficient for Complaint Counsel to make any such determinations. **Response:** Without waiver of its objections, Respondent has tendered or will tender documents in response to this interrogatory.

Respectfully submitted,



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

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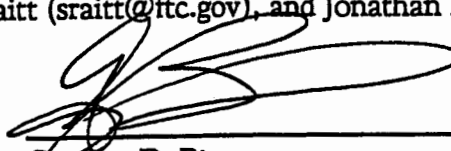
· ATTORNEYS FOR NORTH TEXAS
SPECIALTY PHYSICIANS

CERTIFICATE OF SERVICE

I, Gregory D. Binns, hereby certify that on December 31st, 2003, I caused a copy of Respondent's Response to Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians, to be served upon the following person by e-mail, first class mail, and by Federal Express:

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

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

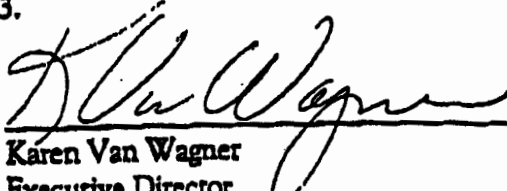


Gregory D. Binns

VERIFICATION

I, Karen Van Wagner, Executive Director of North Texas Specialty Physicians, have read the foregoing Respondent's Response to Complaint Counsel's Interrogatories to Respondent North Texas Specialty Physicians, and know the contents thereof, and affirm that they are true.


Dated: 12/31, 2003.



Karen Van Wagner
Executive Director

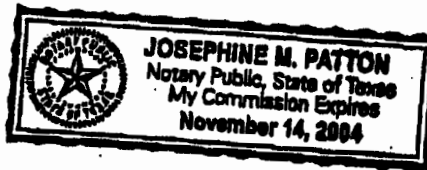
NORTH TEXAS SPECIALTY PHYSICIANS

SUBSCRIBED AND SWORN TO BEFORE ME in the County of Tarrant, State of Texas, this 31 day of December, 2003.



NOTARY PUBLIC

My commission expires



007155 000034 DALLAS 1677582.3

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 FIRST REQUEST TO RESPONDENT
FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.37, complaint counsel hereby requests that respondent North Texas Specialty Physicians produce all documents and other things responsive to the following specifications, within their possession, custody, or control, within twenty days in accordance with the definition and instructions set forth below. Objections shall be due within ten days of service.

DEFINITIONS

1. The terms "NTSP" and "respondent," as used in this request, mean North Texas Specialty Physicians, its past and present members, participating physicians (including physicians designated as "sub-contracted" physicians), directors, officers, trustees, employees, agents and representatives, consultants, divisions, subsidiaries, affiliates, partnerships and joint ventures. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by North Texas Specialty Physicians.
2. The term "health plan" includes any third-party payor, health maintenance organization (HMO), preferred provider organization (PPO), fee-for-service indemnity insurance, employer self-insured health benefit plan, Medicare, Medicaid, or any other private or governmental health care plan or insurance of any kind.
3. The term "physician entities" means sole proprietorships, partnerships, foundations, and professional corporations of physicians.

4. The term "physician organizations" means all associations of physicians, including physician entities and physician independent practice associations ("IPAs").
5. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the company. The term "documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals; and copies of documents the originals of which are not in the possession, custody or control of the company.

(a) Unless otherwise specified, the term "documents" excludes bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature and also excludes architectural plans and engineering blueprints.

(b) The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. If the company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with Commission representative, Michael Bloom, whose contact information is given at Instruction 8 of this Request. The Commission representative will consider modifying this instruction to:

(i) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, servers searched by the company;

(ii) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Commission representatives; or

(iii) include other proposals consistent with Commission policy and the facts of the case.

6. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
7. The terms "discuss" or "discussing" mean, in whole or in part, constituting, containing, describing, or addressing the designated subject matter, regardless of the length of the treatment or detail of analysis of the subject matter, but not merely referring to the designated subject matter without elaboration. In addition, a document that "discusses" another document includes the other document itself (*e.g.*, a document that "discusses" an agreement or contract includes the agreement or contract itself). Further, these terms include any operating or financial data about the designated subject matter where such data are separately set out as in a chart, listing, table, or graph.
8. The term "including" means including, but not limited to.
9. The terms "documents sufficient to show" and "documents sufficient to identify" mean documents that are necessary and sufficient to provide the specified information. If summaries, compilations, lists or synopses are available that provide the information, these should be provided in lieu of the underlying documents.
10. The terms "identify," "identification," and "identity" mean: (a) when used in reference to a natural person, to state his or her name, job title and description of each of his or her positions during the relevant time period, and the present or last known residence address and business name and address; (b) when used in reference to a person other than a natural person, to state the entity's name and address and principal place of business; (c) when used in reference to a document, to state the type of document (*e.g.*, letter, memorandum, book, telegram, application, chart, report, photograph, sound reproduction, etc.), its date, title and general subject matter, its title in the case of publication, its author, each addressee, all individuals designated on the document to receive a copy (or if any such document was, but is no longer in existence, state precisely what disposition was made of it, when such disposition took place, and the identity of the person who ordered or authorized such disposition); and, (d) when used in reference to an oral communication, to identify the persons who participated in the conversation and to state when it took place, where, who was present, and who said what to whom, in words or substance.
11. The terms "each," "any," and "all" mean "each and every."
12. The terms "and" and "or" have both conjunctive and disjunctive meanings as necessary to bring within the scope of this request anything that might otherwise be outside its scope.
13. The singular form of a noun or pronoun includes its plural form, and vice versa; and the use of a verb in any tense shall be construed as the use of the verb in all other tenses as

necessary to bring within the scope of the request all documents that might otherwise be construed to be outside its scope.

14. The term "year" means either the calendar year or, for financial records, the fiscal year.
15. The term "agreement" means any oral or written contract, arrangement or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments.
16. The term "plan" means a proposal, recommendation or consideration, whether or not precisely formulated, finalized, authorized, or adopted.
17. The term "person" includes NTSP and means any natural person, business entity, corporate entity, sole proprietorship, partnership, association, governmental entity, or trust.
18. The term "communication" means any exchange, transfer, transmittal or dissemination of information, regardless of the means by which it is accomplished, in the form of facts, opinions, ideas, inquiries or otherwise.
19. The term "relevant areas" means each of the following: the City of Fort Worth; Tarrant County; the Fort Worth-Arlington Primary Metropolitan Statistical Area ("PMSA"); the City of Dallas; Dallas County; the Dallas PMSA, and the Dallas-Fort Worth Combined Metropolitan Statistical Area ("CMSA"), as defined by the federal Office of Management and Budget.
20. The term "participating physician" means any physician or physician entity that has contracted with NTSP regarding the provision or contemplated provision of the physician's services to any hospital, health plan, or other physician organization, irrespective of whether NTSP refers to such physician or physician entity as a member, participating physician, sub-contracted physician, or by any other designation. "Participating physicians" includes all or any subset of participating physicians not limited to members of a single physician entity.
21. The terms "sharing of financial risk," "financial risk-sharing," and similar terms mean the sharing of substantial financial risk by participating physicians, through such devices as: the provision of physician services to payors at a capitated rate; the provision of physician services for a predetermined percentage of premium or revenue from payors; the use of significant financial incentives (e.g., substantial withholds) for physicians who participate to achieve, as a group, specified cost-containment goals, or the provision of a complex or extended course of treatment that requires the substantial coordination of care by physicians in different specialties offering a complementary mix of services, for a fixed, predetermined payment, where the costs of that course of treatment for any individual

patient can vary greatly due to the individual patient's condition, the choice, complexity, or length of treatment, or other factors.

22. The term "participation agreement" means any agreement between NTSP and a physician regarding the provision or contemplated provision of the physician's services to any hospital, health plan, or other physician organization.
23. The term "contract" means any agreement or contemplated agreement between or among two or more people supported, or contemplated to be supported, by mutual consideration. "Contract" includes, but is not limited to, partial or complete proposals, descriptions, summaries, drafts, counter-offers, revisions, amendments, and terms thereof, whether or not any agreement ultimately was executed.

INSTRUCTIONS

1. Unless otherwise indicated, each specification covers documents dated, generated, received, or in effect from January 1, 1998 to the day when NTSP provides complaint counsel with its final document submission, the executed verification form, and other compliance-related documents described in instruction 11. Respondent should supplement, amend or correct the disclosure and responses to these requests on a continuing basis, to the extent that it ascertains any additional responsive information or receives any additional responsive material, including, but not limited to, responsive material from non-parties.
2. Compliance with this request requires a search of all documents in the possession, custody, or control of respondent, including, but not limited to, those documents held by any of NTSP's officers, directors, employees, agents, members, participating or sub-contracted physicians, or representatives, whether or not such documents are on the premises of NTSP. If any person is unwilling to have his or her files searched, or is unwilling to produce responsive documents, respondent must provide complaint counsel with the following information as to each such person: his or her name, address, telephone number, and relationship to NTSP.
3. In addition to hard-copy documents, the search will include all of NTSP's electronically-stored computer and voicemail data. Sources of such data include the following:
 - a. Desktop personal computers ("PCs") and workstations; PCs, workstations, minicomputers and mainframes used as file servers, application servers, or mail servers; laptops, notebooks, and other portable computers, whether assigned to individuals or in computer pools available for shared use; and home computers used for work-related purposes;
 - b. Backup disks and tapes, archive disks and tapes, and other forms of offline storage of computer or voicemail data, whether stored onsite with the computer used to generate them, stored offsite in another NTSP facility or stored offsite by a third-party, such as in a disaster recovery center; and
 - c. Computers and related offline storage used by agents, consultants, and other persons as defined above, which may include persons who are not employees of NTSP or who do not work on NTSP's premises.
4. The response to this Request shall be submitted in the following manner:
 - a. Documents provided shall be complete and, unless privileged, unredacted, submitted as found in the company's files (*e.g.*, documents that in their

original condition were stapled, clipped or otherwise fastened together or maintained in separate file folders shall be produced in such form). Those documents written in a language other than English are to be translated into English; submit the foreign language document, with the English translation attached thereto.

- (i) The company may submit legible photocopies (with color photocopies where necessary to interpret the document), in lieu of original documents, provided that such copies are accompanied by an affidavit of an officer of the company stating that the copies are true, correct and complete copies of the original documents.
 - (ii) With the agreement of the Commission representative identified on the last page of this Request, the company may submit electronic reproductions in lieu of photocopies or original documents, provided that such reproductions are accompanied by an affidavit of an officer of the company stating that the reproductions are true, correct and complete reproductions of the original documents, and provided that the Commission representative approves the electronic document format and production method in advance. Electronic formats and production methods the Commission representative will consider include, without limitation, production in a common page-based format providing images combined with or linked to searchable text files, with the files provided to the Commission either through a secure online web-based or equivalent hosted document repository offering industry-standard access, security, and functionality deemed acceptable by the Commission representative in advance, or on an external network appliance or CD-ROM providing the files in a searchable local database format such as Summation® that provides functionalities equivalent to those available on hosted online repositories, and deemed acceptable by the Commission representative in advance.
- b. Documents submitted in hard copy shall be submitted in sturdy cartons not larger than 1.5 cubic feet. Number each such box and mark each such box with corporate identification and the name(s) of the person(s) whose files are contained in that box.
- c. Pursuant to Rule 3.37(a) (16 CFR § 3.37) documents submitted (whether in hard copy or electronic form) shall either be produced: as they kept in

the usual course of business or organized and labeled to correspond with the specifications in the request. Mark each page with corporate identification and consecutive document control numbers. Place all documents produced in file folders, and mark each file folder with corporate identification, the name of the person whose documents are in the folder, how the original file was labeled, and, if organized by specification, information sufficient to ascertain to which specification(s) the document is responsive; provide equivalent information for documents produced in electronic form.

- d. Provide a master list showing: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that persons' documents; and (iii) if organized by specification, information sufficient to ascertain to which specification(s) the document is responsive. If the master list exists as a computer file(s), provide the master list both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission staff representatives will provide a sample master list upon request.
5. If respondent has produced documents responsive to this request in the course of the pre-complaint investigation of this matter, those documents need not be produced again, provided that in its response to this request, respondent provides complaint counsel with a document log indicating for each such document: (a) information sufficient to ascertain either: the location of the document as maintained in the usual course of business; or the specification(s) of this request to which the document is responsive, (b) the date the document was produced, (c) the control numbers on the document's first and last pages, (d) the name of the person from whose files the document was obtained, and (e) the name of the officer, director, trustee, employee, agent, or representative of NTSP who is most familiar with and best able to give testimony concerning its subject matter.
 6. In the event that any document required to be identified or produced has been destroyed, lost, discarded, or otherwise disposed of, any such document is to be identified as completely as possible, including, but not limited to, the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.
 7. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document

should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable the Commission to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether NTSP asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing NTSP that were not directly or indirectly furnished to NTSP or any third-party, such as internal law firm memoranda, may be omitted from the log.

8. Responsive documents should be sent to: Jonathan Platt, Federal Trade Commission, One Bowling Green, Suite 318, New York, NY 10004. Questions regarding this request should be addressed to Michael Bloom at 212.607.2801.
9. Respondent will provide complaint counsel with the following:
 - a. a verified statement identifying the person(s) involved and the procedures followed in conducting the document search and preparing the response to this request for production of documents; and
 - b. a copy of all instructions used to conduct the document search and to prepare the responsive documents for submission to complaint counsel.
10. Compliance with this request requires respondent to submit all responsive documents and the following to complaint counsel:
 - a. an executed and notarized verification form, which is included in this request;
 - b. a privilege log according to instruction 7, if any responsive documents are withheld or redacted;
 - c. a list of any persons whose files have not been searched according to instruction 2;
 - d. a list of all files that have been searched, designated by the person controlling the file, the company name for the file, or the computer or storage device where the file resides;

- e. a document log completed according to instruction 5, if applicable;
- f. a document log completed according to instruction 4; and
- g. a verified statement identifying the persons, procedures, and instructions used by the NTSP to comply with this request, pursuant to instruction 9.

SPECIFICATIONS

1. NTSP's articles of incorporation, charter, constitution, by-laws, policy statements, participation agreements, and documents sufficient to show any amendments, modifications, or other changes to such documents proposed or adopted since January 1, 1995, as well as the dates when such proposed or actual amendments, modifications, or other changes were adopted or rejected.
2. All reports prepared by NTSP on a regular, on-going basis, including annual reports, reports to participating physicians, and reports filed on a regular basis with any local, state, federal government agency, or certifying organization, such as NCQA, and all underlying data and information relating to these reports.
3. Documents sufficient to identify all NTSP officers, directors, agents, consultants, and individuals responsible for negotiating and approving contract terms with any hospital, health plan, or other physician organization, and, for each individual identified, documents sufficient to identify the dates the individual held the position and the scope of responsibility.
4. All organizational charts and directories for NTSP.
5. All documents that refer to health plan payments to NTSP or to physicians or patients located in any relevant area, from persons located or incorporated outside of Texas.
6. All documents that refer to the participation in Medicare of NTSP or any physician located in any relevant area.
7. All documents that refer to purchases or leases of goods, services, and other things from persons located or incorporated outside of Texas, by NTSP or by physicians located in any relevant area.
8. Documents sufficient to identify all present and former NTSP participating physicians, and for each such present or former physician, documents sufficient to show: (a) dates of participation in NTSP; (b) names of and dates of participation in any other physician

organization in which he/she participated; (c) the physician's medical specialty; (d) all hospitals at which medical staff privileges have been maintained; (e) office telephone number and address with zip code; and (f) each provider agreement with respect to which such person was offered an opportunity to opt in or out by or through NTSP, whether such provider agreement included any health plan pursuant to which the physician would share financial risk with other participating physicians; whether and how such person responded to each opportunity to opt in or out of any provider agreement or health plan, and the dates of such person's participation in each such provider agreement or health plan.

9. All documents, including but not limited to agendas, hand-outs, presentation materials and notes, minutes, and summaries relating to each meeting, whether formal or informal, of members or participating physicians, NTSP's Board of Directors, Executive Committee, Compensation Committee, Medical Management Committee, or any other committee or section having any responsibilities related to contracts with health plans, hospitals, or other physician organizations.
10. One copy of each issue of every newsletter, participating physician guide or manual, bulletin, or other publication produced by, or on behalf of, NTSP.
11. All documents, irrespective of when dated, generated, received, or in effect, relating to the origin, purpose, objective, or intent of NTSP's practices and procedures relating to the polling of participating physicians, the establishment of minimum acceptable compensation or reimbursement, or "Contracted Minimums" as this term is used by NTSP (see, *e.g.*, NTSP 005015).
12. All documents, irrespective of when dated, generated, received, or in effect, relating to:
(a) NTSP's design, approval, and carrying out of polling of its participating physicians;
(b) participating physicians' responses thereto; (c) analyses of participating physicians' responses thereto, including but not limited to participating physicians' response rates, and the validity, reliability, and soundness of data collected and inferences or findings therefrom; (d) recommendations and actions considered, made, influenced, rejected, accepted, or approved as a result of polling by NTSP of its participating physicians; (e) any mention of or reference to polling data or minimum acceptable fees or "Contracted Minimums" as this term is used by NTSP (see, *e.g.*, NTSP 005015), in connection with possible, contemplated, planned, or actual communications with payors or any particular payors.
13. All documents, irrespective of when dated, generated, received, or in effect, relating to the origin, purpose, objective, or intent of any deviations from the practices and procedures described in NTSP's constitution, by-laws, and participating physician agreements for NTSP's and participating physicians' receipt, forwarding, handling,

analysis, negotiation, consideration, and acceptance or rejection of contract terms with any hospital, health plan, or other physician organization.

14. All documents created or used by, for, or on behalf of, NTSP for the purpose of soliciting physicians to participate in NTSP, promoting continued participation in NTSP, or otherwise offering, promoting, or advertising NTSP's services or activities on behalf of physicians, and all documents supplied by NTSP to newly participating physicians.
15. All contracts between NTSP or any of its participating physicians and any health plan, hospital, or other physician organization, including their price sheets or price terms.
16. All documents related to contracts between NTSP or any of its participating physicians and any health plan, hospital, or other physician organization, including:
 - a. Any actual, contemplated or potential review, comment, advice, representation, recommendation, endorsement, instruction, plan, decision, or action communicated to NTSP's Board of Directors, Executive Committee or any other committee or section, or participating physicians;
 - b. Any presentation prepared for any meeting, or any document relating to any discussion, negotiation, correspondence, or other communications, between NTSP and any health plan, hospital, physician, or other physician organization that relates to contracts between NTSP and any health plan, hospital, or other physician organization; and
 - c. Any summaries, comparisons, or analyses of proposed or actual contract terms.
17. All documents that discuss any suggestions or instructions by NTSP to its officers, employees, or agents engaged in negotiating contracts with health plans, hospitals, or other physician organizations, including training materials, manuals, and formal or informal directives.
18. All documents relating to actual, planned, or contemplated participation or departicipation by participating physicians in (a) any contract between physicians and any health plan, hospital, or other physician organization; or (b) any contract with any health plan, hospital, or other physician organization negotiated for or on behalf of NTSP or participating physicians by any physician organization other than NTSP.
19. All documents that relate to communications between NTSP and any participating physician, or between participating physicians, relating to any possible, preferred, proposed, minimum acceptable, or actual compensation or reimbursement or "Contracted Minimums" as this term is used by NTSP (see, e.g., NTSP 005015).

20. All documents that relate to communications between NTSP and any participating physician, or between participating physicians, relating to any refusal by NTSP or any of its participating physicians to accept, messenger, continue, or renew, any health plan contract or provider agreement.
21. All documents relating to:
 - a. The extent to which participating physicians earn revenue from sources other than through contracts negotiated by or offered or administered through NTSP;
 - b. Any communications between NTSP and participating physicians, or among participating physicians, regarding price or other terms of participation in health plan contracts; and
 - c. Any actual, contemplated, or possible change in NTSP's organizational structure, policies, processes, or procedures related to the manner in which NTSP, and its participating physicians, negotiate contracts with any health plan, hospital, or other physician organization.
22. For each participating physician, separately for each health plan, documents sufficient to show the revenue generated by the physician for services provided pursuant to (a) HMO contracts negotiated by or offered or administered through NTSP pursuant to which the physician shares financial risk with other participating physicians; (b) HMO contracts negotiated by or offered or administered through NTSP pursuant to which the physician does not share financial risk with other participating physicians; (c) PPO contracts negotiated by or offered or administered through NTSP; and (d) other arrangements. Provide all related underlying data, information, and analyses.
23. For each participating physician, separately for each health plan, documents sufficient to show the number of patients treated pursuant to (a) HMO contracts negotiated by or offered or administered through NTSP pursuant to which the physician shares financial risk with other participating physicians; (b) HMO contracts negotiated by or offered or administered through NTSP pursuant to which the physician does not share financial risk with other participating physicians; (c) PPO contracts negotiated by or offered or administered through NTSP; and (d) other arrangements. Provide all related underlying data, information, and analyses.
24. All documents relating to competition between physicians practicing different medical specialties within any relevant area.
25. All documents relating to competition between physicians practicing any medical speciality and primary care practitioners within any relevant area.

26. All documents relating to competition between physicians located in any relevant area and any other relevant area.
27. All documents relating to competition between NTSP and any other physician organization (a) for participating physicians, and (b) for health plan contracts, including but not limited to all communications between NTSP and any other IPA.
28. All documents relating to (a) zip code of origin of patients served by participating physicians pursuant to HMO contracts negotiated by or offered or administered through NTSP under which the physician shares financial risk with other participating physicians, (b) zip code of origin of patients served by participating physicians pursuant to HMO contracts negotiated by or offered or administered through NTSP under which the physician does not share financial risk with other participating physicians, (c) zip code of origin of patients served by participating physicians pursuant to PPO contracts negotiated by or offered or administered through NTSP; (d) zip code of origin of patients served by participating physicians pursuant to contracts negotiated by or offered or administered through IPAs other than NTSP; (e) zip code of origin of patients served by participating physicians pursuant to contracts negotiated directly by those physicians or entities of which the physicians are a part; (f) the geographic area or areas in which participating physicians compete for patients.
29. All documents relating to the competitive significance of NTSP or its participating physicians in any relevant area, including but not limited to: (a) documents that analyze, estimate, state, or characterize the market share or power of NTSP or any of its participating physicians; and (b) documents that relate to the importance to consumers, employers, payors, or other IPAs of the inclusion of NTSP or any of its participating physicians in a health plan contemplated or offered in any relevant area.
30. All studies, reports, data sets, or analyses requested, purchased, or used by NTSP from any trade association, information service, such as HEDIS, or government agency, and all documents relating to the use of these studies, reports, data sets or analyses, including all correspondence.
31. All documents that discuss (a) the competitive position, pricing plans, forecasts, policies, or strategies of NTSP or any other physician organization in any relevant area; (b) competition among any physicians for contracts from or with any health plan in any relevant area; (c) supply and demand conditions for physician services in any relevant area; and (d) the impact of NTSP's pricing strategies, including its establishment of minimum fees or "Contracted Minimums" as this term is used by NTSP (see, e.g., NTSP 005015) at which it will contract with payors, on competition, prices, demand, output, profits, and costs, including market studies, consumer research, forecasts and surveys.

32. All documents relating to any communications with any physician organization in any relevant area regarding negotiations with health plans, hospitals, or other physician organizations or possible, preferred, proposed, or actual reimbursement for physician services.
33. All documents relating to any proposed or actual joint activities between NTSP and any other physician organization in any relevant area.
34. All documents that discuss Integration Concepts' Multi-Dimensional Reporting system, including all documents that discuss its purpose, functionality, and operation, and NTSP's need for, evaluations of, and planned and actual uses of the system.
35. Separately for (a) HMO contracts negotiated by or offered or administered through NTSP under which the physician shares financial risk with other participating physicians, (b) HMO contracts negotiated by or offered or administered through NTSP under which the physician does not share financial risk with other participating physicians, and (c) PPO contracts negotiated by or offered or administered through NTSP, documents sufficient to show: the nature and extent of any activities by NTSP to improve the quality or cost effectiveness of services delivered to patients by participating physicians, including, but not limited to, all documents discussing active and ongoing programs regarding utilization review or management; development and use of practice guidelines or treatment protocols; development and use of performance goals; impact of incentives on NTSP's quality and cost management programs; success in meeting established quality or cost-effectiveness goals; remedial or disciplinary actions against any participating physician for his or her performance relating to any NTSP contract; participation in disease or case management programs; participation in physician credentialing; and investment in information systems or other infrastructure related to NTSP programs.
36. Documents sufficient to show and describe all financial risk that its participating physicians share as a result of their participation in NTSP, including, but not limited to, capitation, fee withholds, bonuses, or other financial incentives, global or all-inclusive case rates; percentages of health plan premiums for designated packages of services, and any financial bonuses received or withholds forfeited by any participating physicians as a result of their participation in any NTSP contract, including all contracts pursuant to which such risk is shared.
37. All underlying data, information, and analyses relating to specifications 34 and 35.
38. Separately for (a) HMO contracts negotiated by or offered or administered through NTSP under which the physician shares financial risk with other participating physicians, (b) HMO contracts negotiated by or offered or administered through NTSP under which the physician does not share financial risk with other participating physicians, and (c) PPO contracts negotiated by or offered or administered through NTSP, documents sufficient to

show: (i) how and to what extent any of the activities identified in response to specifications 34 and 35 create cooperation and interdependence among NTSP participating physicians to control costs and ensure the quality of health care services provided by NTSP; and (ii) how the agreement among NTSP participating physicians on the fees they will charge for their services or the collective negotiation of fees by NTSP with health plans promotes or is necessary to create or facilitate cooperation and interdependence among NTSP participating physicians regarding cost control or quality-related activities.

39. All documents relating to any actual or proposed delegation of administrative or management functions (such as claims processing, credentialing, quality assurance, or utilization review) to NTSP by any health plan, including, but not limited to, any documents that discuss the desirability of such delegation or the cost of having NTSP provide these services.
40. All documents relating to possible antitrust risks associated with any actual or potential activities of NTSP.
41. All documents discussing Statement 8 of the Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care, excluding copies of the statements themselves.
42. All credentialing standards that NTSP imposes on its participating physicians.
43. All documents relating to the ability of participating physicians to meet actual or proposed NTSP standards for physician participation.
44. Separately for each calendar year, documents sufficient to show: (a) the number of physicians who applied to participate in NTSP; (b) the identity of each physician who NTSP did not accept for participation, or whose participation was limited to non-risk-shared products, because the physician failed to meet NTSP's requirements for participation or for participation in risk-shared products; (c) the specific requirements that each such physician failed to meet; (d) the identity of each participating physician who was expelled or allowed to resign from NTSP, or whose continued participation was limited to non-risk-shared products, because he or she failed to meet NTSP's requirements for continued participation or for participation in risk-shared products; and (e) any requirements for participation in risk-shared contracts that differ from or are in addition to requirements applicable to participation in fee-for-service agreements or in NTSP generally.
45. All manuals, directives, protocols, or instructions, formal or informal, provided by NTSP to its employees, agents, and independent contractors in connection with conducting any

evaluation, audit, or inspection of (a) physicians' credentials; (b) physicians' offices; (c) patients' medical records; and (d) any other patient or physician records.

46. All documents discussing fee schedules developed by health plans.
47. All documents that relate to the decision to expand NTSP to include primary care practitioners.
48. All documents that relate to the participation or non-participation by primary care practitioners in the sharing of financial risk with other participating physicians through NTSP.
49. All documents that clarify, explain, expand upon, modify, eliminate, or contradict Section 2.1 of NTSP's Physician Participation Agreement, previously provided to Federal Trade Commission staff under Bates number NTSP 000025 *et seq.*, insofar as it provides that "NTSP shall have the right to receive all Payor Offers made to NTSP or Physician Physician will promptly forward such Payor Offer to NTSP for further handling in accordance with the provisions of this Agreement."
50. All documents that relate to NTSP's implementation of or compliance with the language of Section 2.1 of NTSP's Physician Participation Agreement quoted in specification 49 hereof.
51. All documents that clarify, explain, expand upon, modify, eliminate, or contradict Section 2.5 of NTSP's Physician Participation Agreement, previously provided to Federal Trade Commission staff under Bates number NTSP 000025 *et seq.*, insofar as it provides that "Promptly after receiving any Non Risk Payor Offer . . . , NTSP shall deliver to physician and each other Participating Physician the Fee Schedule and other economic provisions of the Non Risk Payor Offer. Physician shall have ten (10) business days within which to accept or reject such Fee Schedule and economic provisions, with the understanding that if the Physician fails so to accept or reject within such 10-day period, Physician shall be deemed to have accepted such Fee Schedule and economic provisions."
52. All documents that relate to NTSP's implementation of or compliance with the language of Section 2.5 of NTSP's Physician Participation Agreement quoted in specification 51 hereof.
53. All documents that clarify, explain, expand upon, modify, eliminate, or contradict Section 2.5 of NTSP's Physician Participation Agreement, previously provided to Federal Trade Commission staff under Bates number NTSP 000025 *et seq.*, insofar as it provides that "If the Participating Physicians who approve and who are deemed to have approved the Non Risk Payor Offer constitute 50% or more of all Participating Physicians, then NTSP, on behalf of Physician, shall notify the Payor of the acceptance and proceed with

negotiation and execution of a Payor Agreement with respect to such offer. If 50% or more of the Participating Physicians request that NTSP submit a counter-proposal to the applicable Payor, then NTSP, on behalf and as agent of Physician, shall proceed with negotiation and execution of a Payor Agreement with respect to such counter-proposed offer.”

54. All documents that relate to NTSP’s implementation of or compliance with the language of Section 2.5 of NTSP’s Physician Participation Agreement quoted in specification 53 hereof.
55. All documents that clarify, explain, expand upon, modify, eliminate, or contradict Section 2.6 of NTSP’s Physician Participation Agreement, previously provided to Federal Trade Commission staff under Bates number NTSP 000025 *et seq.*, which provides that “If NTSP rejects any Payor Offer and advises the Participating Physicians in writing that it is permanently discontinuing negotiations . . . then NTSP shall have no further responsibilities with respect thereto and any Participating Physician shall have the right to pursue such Payor Offer on its own behalf.”
56. All documents that relate to NTSP’s implementation of or compliance with the language of Section 2.6 of NTSP’s Physician Participation Agreement quoted in specification 55 hereof.
57. All documents that clarify, explain, expand upon, modify, eliminate, or contradict Section 2.6 of NTSP’s Physician Participation Agreement, previously provided to Federal Trade Commission staff under Bates number NTSP 000025 *et seq.*, which provides that “If the Participating Physicians who approve and who are deemed to have approved the Non Risk Payor Offer constitute 50% or more of all Participating Physicians, then NTSP, on behalf of Physician, shall notify the Payor of the acceptance and proceed with negotiation and execution of a Payor Agreement with respect to such offer. If 50% or more of the Participating Physicians request that NTSP submit a counter-proposal to the applicable Payor, then NTSP shall submit the counter-proposal to such Payor. . . .”
58. All documents that relate to NTSP’s implementation of or compliance with the language of Section 2.6 of NTSP’s Physician Participation Agreement quoted in specification 57 hereof.
59. All documents by which participating physicians limit NTSP’s authority to messenger contract proposals to them, or authorize NTSP to messenger to them only provider agreements that provide for physician compensation or reimbursement at or above a minimum acceptable fee schedule or “Contracted Minimums” as this term is used by NTSP (see, *e.g.*, NTSP 005015) designated by NTSP or derived from calculating the central tendencies (mean, median, and mode) of participating physicians’ polling responses.

60. All documents that relate to participating physicians' contracts with Healthsource for the provision of medical services in conjunction with Healthsource health plans, and to the status or disposition of those agreements following CIGNA's acquisition of Healthsource.
61. All documents that relate to the proposed, possible, contemplated, or actual entry by NTSP into, continuation or renegotiation of, or termination or departicipation from any plan or agreement for the provision of physician services by participating providers with or through: (a) Health Texas Provider Network; (b) Blue Cross; (c) CIGNA Healthcare of Texas; (d) PacifiCare; (e) Aetna; (f) Medical Select Management; (g) United HealthCare; (h) Humana; and (i) any other hospital, health plan, or other physician organization.
62. All documents that relate to NTSP's solicitation or possible, threatened, contemplated, or actual exercise of Powers of Attorney for participating physicians or to NTSP's representation to any hospital, health plan, or other physician organization that NTSP is the agent or exclusive representative of any of its participating physicians.
63. All documents that relate to the decision to draft, the drafting, and participating physician actions in response to the dissemination of the Fax Alert of December 12, 2000, previously provided to Federal Trade Commission staff under Bates number 005077 *et seq.*
64. All documents that relate to the decision to draft, the drafting, and participating physician actions in response to the dissemination of the Fax Alert # 10 of February 10, 2000, previously provided to Federal Trade Commission staff under Bates number 014727 *et seq.*
65. Such documents as will explain all differences in the rights, responsibilities, and status of "NTSP Members, Sub-contracted Specialists and Sub-contracted Primary Care Physicians" as those terms are used in Fax Alert # 1 of January 4, 2001, previously provided to Federal Trade Commission staff under Bates number 004809. If the meaning of those terms as used in the Fax Alert is different from the common usage of those terms by NTSP in the ordinary course of its activities, also provide such documents as will explain those common usages.
66. Such documents as will explain all differences in the rights, responsibilities, and status of "NTSP Members, PSN PCPs and Affiliates" as those terms are used in Fax Alert # 60 of September 13, 2001, previously provided to Federal Trade Commission staff under Bates number 004945. If the meaning of those terms as used in the Fax Alert is different from the common usage of those terms by NTSP in the ordinary course of its activities, also provide such documents as will explain those common usages.

67. Such documents as will identify Provider Service Network ("PSN"), the relationship between PSN and NTSP, and the activities and agreements in which PSN and NTSP were or are engaged jointly or in common.
68. All documents that, with respect to any possible, contemplated, planned, or actual contract offer or amendment received by a participating physician from any health plan, hospital, or other physician organization, refer to, suggest, request, or instruct that participating physicians take no action, defer any action, or refer the health plan, hospital, or other physician organization to NTSP.
69. All documents that relate to: (a) Specialty NET; (b) Don F. Johnston, M.D. and (c) any other independent practice association that has, or that has considered or been considered by NTSP for the development of, a relationship with NTSP similar to that of Specialty NET.
70. Such documents as will indicate whether, the extent to which, and when NTSP considered, proposed, or held any financial risk pursuant to any possible, contemplated, planned, or actual agreement with Medical Select Management ("MSM").
71. All documents that relate to the decision to draft, the drafting, and participating physician actions in response to the dissemination of the Fax Alert of December 12, 2000, previously provided to Federal Trade Commission staff under Bates number 005077 *et seq.*
72. All documents that relate to the subject matter of Fax Alert 65 of October 6, 2000, previously provided to Federal Trade Commission staff under Bates number 005119.
73. All prior and subsequent iterations of the NTSP Fact Sheet previously provided to Federal Trade Commission staff under Bates number 00088, and any documents similarly describing the make-up of NTSP, the communities served by NTSP, or its hospital affiliations.
74. All documents that relate to Exhibit 1 to NTSP's Position Paper of August 28, 2003, presented to members of the Federal Trade Commission ("Position Paper") or to NTSP's assertion in that Position Paper that "NTSP has fewer hospital days than almost all of the other reported HMO provider panels" (see page 2 of NTSP's Position Paper), including but not limited to: (a) all documents that discuss the need for an analysis of matters reflected in Exhibit 1; (b) all other iterations of such an analysis; (c) all documents used in the preparation of Exhibit 1; (d) all documents that comment on Exhibit 1 or the subject matter to which Exhibit 1 relates; and (e) all documents that relate to the relevance of the information contained in or conveyed by Exhibit 1 to NTSP's fee-for-service HMO or PPO arrangements.

75. All documents that relate to Exhibit 2 to NTSP's Position Paper or to NTSP's assertion in that Position Paper that "NTSP has fewer hospital days than almost all of the other reported HMO provider panels" (see page 2 of NTSP's Position Paper), including but not limited to: (a) all documents that discuss the need for an analysis of matters reflected in Exhibit 2; (b) all other iterations of such an analysis; (c) all documents used in the preparation of Exhibit 2; (d) all documents that comment on Exhibit 2 or the subject matter to which Exhibit 2 relates; and (e) all documents that relate to the relevance of the information contained in or conveyed by Exhibit 1 to NTSP's fee-for-service HMO or PPO arrangements.
76. All other documents that relate to any comparison of "hospital days" (see page 2 of NTSP's Position Paper) for patients receiving care from NTSP participating providers under NTSP's fee-for-service HMO arrangements or PPO arrangements, on the one hand, and patients receiving care from other physicians pursuant to fee-for-service HMO arrangements, PPO arrangements, or direct fee-for-service arrangements, on the other.
77. All documents that relate to Exhibit 3 to NTSP's Position Paper or to NTSP's assertion in that Position Paper that "NTSP has lower medical costs per-member-per-month than almost all other reported HMO provider panels" (see page 2 of NTSP's Position Paper), including but not limited to: (a) all documents that discuss the need for an analysis of matters reflected in Exhibit 3; (b) all other iterations of such an analysis; (c) all documents used in the preparation of Exhibit 3; (d) all documents that comment on Exhibit 3 or the subject matter to which Exhibit 3 relates; and (e) all documents that relate to the relevance of the information contained in or conveyed by Exhibit 3 to NTSP's fee-for-service HMO or PPO arrangements.
78. All documents that relate to any comparison of cost of care for patients receiving care from NTSP participating providers under NTSP's fee-for-service HMO arrangements or PPO arrangements, on the one hand, and patients receiving care from other physicians pursuant to fee-for-service HMO arrangements, PPO arrangements, or direct fee-for-service arrangements, on the other.
79. All documents that relate to Exhibit 4 to NTSP's Position Paper, including but not limited to: (a) all documents that discuss the need for an analysis of matters reflected in Exhibit 4; (b) all other iterations of such an analysis; (c) all documents used in the preparation of Exhibit 4; (d) all documents that comment on Exhibit 4 or the subject matter to which Exhibit 4 relates; and (e) all documents that relate to the relevance of the information contained in or conveyed by Exhibit 4 to NTSP's fee-for-service HMO or PPO arrangements.
80. All documents that relate to Exhibit 5 to NTSP's Position Paper, including but not limited to: (a) all documents that discuss the need for an analysis of matters reflected in Exhibit 5; (b) all other iterations of such an analysis; (c) all documents used in the preparation of

- Exhibit 5; (d) all documents that comment on Exhibit 5 or the subject matter to which Exhibit 5 relates; and (e) all documents that relate to the relevance of the information contained in or conveyed by Exhibit 5 to NTSP's fee-for-service HMO or PPO arrangements.
81. All documents that relate to Exhibit 6 to NTSP's Position Paper, including but not limited to: (a) all documents that discuss the need for an analysis of matters reflected in Exhibit 6; (b) all other iterations of such an analysis; (c) all documents used in the preparation of Exhibit 6; (d) all documents that comment on Exhibit 6 or the subject matter to which Exhibit 6 relates; and (e) all documents that relate to the relevance of the information contained in or conveyed by Exhibit 4 to NLSF's fee-for-service HMO or PPO arrangements.
 82. All documents that relate to Exhibit 7 to NTSP's Position Paper, including but not limited to: (a) all documents that discuss the need for an analysis of matters reflected in Exhibit 7; (b) all other iterations of such an analysis; (c) all documents used in the preparation of Exhibit 7; (d) all documents that comment on Exhibit 7 or the subject matter to which Exhibit 7 relates; and (e) all documents that relate to the relevance of the information contained in or conveyed by Exhibit 7 to NTSP's fee-for-service HMO or PPO arrangements.
 83. All other documents that relate to any comparison of cost of care, or any element thereof, for patients receiving care from NTSP participating providers under NTSP's fee-for-service HMO arrangements or PPO arrangements, on the one hand, and patients receiving care from other physicians.
 84. All other documents that relate to any comparison of the efficiency or effectiveness of participating physicians, however estimated or measured, as compared with other physicians or to the efficiency or effectiveness of payor arrangements with NTSP as compared with other IPAs or direct contracting between payors and physicians.
 85. All documents that relate to Exhibit 8 to NTSP's Position Paper or its assertion that "NTSP providers have received much higher satisfaction ratings from patients than other provider panels" (see page 2 of NTSP's Position Paper), including but not limited to: (a) all documents that discuss the need for an analysis of matters reflected in Exhibit 8; (b) all other iterations of such an analysis; (c) all documents used in the preparation of Exhibit 8; (d) all documents that comment on Exhibit 8 or the subject matter to which Exhibit 8 relates; and (e) all documents that relate to the relevance of the information contained in or conveyed by Exhibit 8 to NTSP's fee-for-service HMO or PPO arrangements.

86. All documents that relate to Exhibit 9 to NTSP's Position Paper or its assertion that "NTSP providers have received much higher satisfaction ratings from patients than other provider panels" (see page 2 of NTSP's Position Paper), including but not limited to: (a) all documents that discuss the need for an analysis of matters reflected in Exhibit 9; (b) all other iterations of such an analysis; (c) all documents used in the preparation of Exhibit 9; (d) all documents that comment on Exhibit 9 or the subject matter to which Exhibit 9 relates; and (e) all documents that relate to the relevance of the information contained in or conveyed by Exhibit 9 to NTSP's fee-for-service HMO or PPO arrangements.
87. All other documents that relate to any analysis or comparison of patient satisfaction, or any element thereof, for patients receiving care from NTSP participating providers under NTSP's fee-for-service HMO arrangements or PPO arrangements, on the one hand, and patients receiving care from other physicians, on the other.
88. All documents that relate to Exhibit 10 to NTSP's Position Paper or its assertion that "NTSP has much lower complaint rates than most other PacifiCare provider panels" (see page 2 of NTSP's Position Paper), including but not limited to: (a) all documents that discuss the need for an analysis of matters reflected in Exhibit 9; (b) all other iterations of such an analysis; (c) all documents used in the preparation of Exhibit 9; (d) all documents that comment on Exhibit 9 or the subject matter to which Exhibit 9 relates; and (e) all documents that relate to the relevance of the information contained in or conveyed by Exhibit 9 to NTSP's fee-for-service HMO or PPO arrangements.
89. All documents that relate to Exhibit 11 to NTSP's Position Paper or its assertion that "NTSP providers have received much higher satisfaction ratings from patients than other provider panels" (see page 2 of NTSP's Position Paper), including but not limited to: (a) all documents that discuss the need for an analysis of matters reflected in Exhibit 11; (b) all other iterations of such an analysis; (c) all documents used in the preparation of Exhibit 11; (d) all documents that comment on Exhibit 11 or the subject matter to which Exhibit 11 relates; and (e) all documents that relate to the relevance of the information contained in or conveyed by Exhibit 11 to NTSP's fee-for-service HMO or PPO arrangements.
90. All documents that relate to the survey, referred to at page 2 of NTSP's Position Paper, that purportedly showed that "87% of NTSP's surveyed patients indicated that they were 'completely satisfied' with their doctors," including but not limited to: (a) all documents that discuss the need for an analysis of matters reflected in the survey; (b) all other iterations of such an analysis; (c) all documents used in the preparation of the survey; (d) all documents that comment on the survey or the subject matter to which it relates; (e) all documents that relate to the relevance of the survey to NTSP's fee-for-service HMO or PPO arrangements; and (f) all other surveys or analyses of patient satisfaction relating to or comparing care from NTSP participating providers under NTSP's fee-for-

service HMO arrangements or PPO arrangements, on the one hand, and patients receiving care from other physicians, on the other.

91. All documents relating to NTSP's policies and procedures for the retention and destruction of documents, including any changes in those policies and procedures.

VERIFICATION

This response was prepared by me or under my personal supervision from the documents and records of respondent, North Texas Specialty Physicians, in accordance with the instructions and definitions in the request for production of documents issued by the Federal Trade Commission in docket number 9312 and is complete and correct to the best of my knowledge and belief.

Where copies of documents have been provided, the copies are true, correct, and complete copies of respondent's original documents. If complaint counsel uses such copies in any court or administrative proceeding, respondent will not object based on complaint counsel not offering the original document.

Signature of Official

Type or Print Name

Title

Date

Subscribed and sworn to before me at the County of _____, State of _____, this _____ day of _____, 2003.

NOTARY PUBLIC

My commission expires _____

CERTIFICATE OF SERVICE

I, Michael Joel Bloom, hereby certify that on August, 17, 2003, I caused a copy of complaint counsel's first request for production of documents and things issued to respondent to be served upon the following person by facsimile and by Federal Express:

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

PH: 214.969.1144
FX: 214.969.1751

A handwritten signature in black ink, appearing to read "Michael Bloom", is written over a horizontal line. The signature is stylized and cursive.

Exhibit C

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF
NORTH TEXAS SPECIALTY PHYSICIANS,
A CORPORATION.

Docket No. 9312

AFFIDAVIT OF GREGORY D. BINNS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned notary public, on this day personally appeared Gregory D. Binns, who being duly sworn on his oath deposed and stated as follows:

1. My name is Gregory D. Binns. I am over the age of 21, am of sound mind, and am fully competent to give this Affidavit. I am licensed to practice law in the State of Texas and have been so licensed since November 2000. I am counsel of record for Respondent North Texas Specialty Physicians and, by virtue of this position, I have personal knowledge of the facts stated within this Affidavit and such facts are true and correct.

2. Complaint Counsel has the same set of over 100,000 documents produced by Respondent and third parties as Respondent North Texas Specialty Physicians. Respondent's documents are not organized in any manner that is different from the manner in which they were sent to Complaint Counsel.

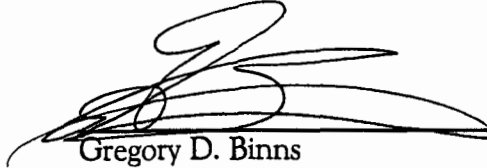
3. The documents Respondent has that have been produced in this adjudicative proceeding are not organized by factual contention or in any other manner which would make finding specific documents less burdensome on Respondent than Complaint Counsel.

4. Answering Interrogatory Nos. 1-8, which ask Respondent to identify specific documents supporting contentions it has not made, would require a time-consuming analysis and search, and commentary by Respondent's Counsel.

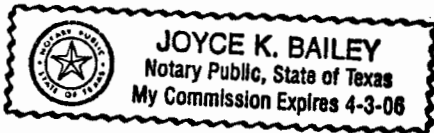
5. I have been primarily responsible for handling the document production in this case. I estimate that it will take approximately one hour of attorney time to review 500

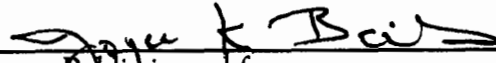
documents. Therefore, I estimate that the above-mentioned search of the documents produced by Respondent and third parties in the adjudicative proceeding would take approximately 200 hours of attorney time.

Further Affiant sayeth not.


Gregory D. Binns

SUBSCRIBED AND SWORN TO BEFORE ME this 19th day of January, 2004.




Notary Public in and for
the State of Texas

My Commission Expires:

4-3-06

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF

NORTH TEXAS SPECIALTY PHYSICIANS,
A CORPORATION.

Docket No. 9312

**Order Denying Expedited Motion of Complaint Counsel for an Order
Compelling Compliance with Interrogatories or Excluding Related Evidence; and
Rescheduling Deposition of Dr. Karen Van Wagner**

I.

Complaint Counsel served interrogatories on Respondent to which Respondent provided objections and responses. On January 12, 2004, Complaint Counsel filed a motion to compel further responses. Respondent filed a response opposing the motion. For the reasons set forth below, Complaint Counsel's motion is DENIED.

II.

Complaint Counsel seeks an order compelling Respondent to respond to Complaint Counsel's First Set of Interrogatories. Complaint Counsel's interrogatories are overly broad and unduly burdensome because they are repetitious of previous discovery requests, reference contentions not made by Respondent, implicate the work product privilege, and are otherwise outside the scope of discovery. Respondent is not required to provide further response to Complaint Counsel's interrogatories.

Complaint Counsel has also asked that the deposition of Karen Van Wagner be postponed. Because Complaint Counsel has already scheduled this deposition and it is nearing the end of fact discovery, this deposition will not be postponed.

Ordered:

D. Michael Chappell
Administrative Law Judge

Date: