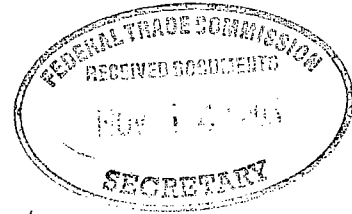


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)

North Texas Specialty Physicians,)
Respondent.)

Docket No. 9312

**ORDER ON RESPONDENT'S MOTION
FOR PROTECTIVE ORDER AND MOTION TO QUASH**

I.

On November 12, 2003, Respondent North Texas Specialty Physicians ("NTSP") filed a motion for a protective order seeking the following relief: (1) postponement of depositions noticed by Complaint Counsel to begin November 17, 2003, until at least ten days after Complaint Counsel (a) has answered interrogatories that disclose the specific allegations against NTSP, and (b) has produced documents obtained during the pre-complaint investigation; (2) a requirement that the parties schedule depositions on dates and at times and locations that are mutually convenient for all counsel and witnesses. In the alternative, Respondent moves to quash the deposition subpoenas. In addition, Respondent asserts that Southwest Neurological Associates, PA ("SWNA") moves for a protective order extending its deadline to produce documents in response to Complaint Counsel's subpoena.

By Order dated November 12, 2003, Complaint Counsel was ordered to file, on an expedited basis, an opposition on the following requests for relief: (1) postponement of depositions noticed by Complaint Counsel scheduled to begin November 17, 2003; and (2) scheduling of depositions on dates and times and locations that are mutually convenient. Complaint Counsel served its opposition on November 13, 2003, addressing these issues as well as the request to extend the deadline for SWNA to produce documents.

Complaint Counsel's opposition to Respondent's motion to quash the deposition subpoenas is not due until November 19, 2003. Accordingly, no ruling is made with respect to Respondent's motion to quash.

Respondent's motion for a protective order to postpone depositions noticed by Complaint Counsel to begin November 17, 2003 is **GRANTED IN PART** and **DENIED WITHOUT PREJUDICE IN PART**, as set forth below. Respondent's motion for a protective order to require Complaint Counsel to schedule depositions on dates and at times and locations that are

mutually convenient is DENIED WITHOUT PREJUDICE. The motion for a protective order to extend the deadline for SWNA to produce documents is DENIED WITHOUT PREJUDICE.

II.

A. Depositions scheduled to begin November 17, 2003

Respondent asserts that Complaint Counsel has collected nearly five boxes of third party documents over the course of its pre-complaint investigation. Complaint Counsel has informed Respondent that it cannot produce the third party documents until the third parties have had thirty days to object to the disclosure of their documents and to request confidential treatment of those documents, pursuant to the provisions of the Protective Order Governing Discovery Material. According to Complaint Counsel, the third party documents may not be produced until at least November 17, 2003. Nevertheless, Complaint Counsel noticed depositions commencing November 17, 2003.

If Complaint Counsel intends to use any of the requested third-party documents in the noticed depositions, for preparation of Complaint Counsel's questions or to question a deponent, the depositions shall be postponed until seven days after the production of those documents. With these limitations, Respondent's motion for a protective order is GRANTED IN PART.

Respondent's motion for a protective order also seeks to postpone the depositions until after Complaint Counsel has provided answers to Respondent's interrogatories. Respondent's interrogatories ask Complaint Counsel to: (1) identify communications between NTSP and any alleged coconspirator in which the coconspirator agreed that he or she would reject a payor offer; and (2) identify acts or practices of NTSP which Complaint Counsel contend restrains trade, hinders competition, or constitutes an unfair method of competition. Complaint Counsel's Objections and Responses to Respondent's interrogatories object to these two interrogatories on the grounds that they are contention interrogatories that seek "information that is more properly sought after the completion of fact discovery, if at all." Complaint Counsel, in its opposition to the motion for a protective order, argues that it should not have respond to these contention interrogatories prior to the depositions.

The dispute over these interrogatories is the subject of a separate, pending motion to compel responses to interrogatories. Complaint Counsel's opposition to the motion to compel is not due until November 17, 2003. Respondent's motion for a protective order seeking to postpone the depositions until after receipt of Complaint Counsel's responses to interrogatories is DENIED IN PART WITHOUT PREJUDICE.

B. Scheduling of depositions

Respondent asserts that Complaint Counsel unilaterally scheduled depositions without checking on witness' availability and knowing that Respondent's counsel would be unavailable on

certain dates. Respondent further asserts that Complaint Counsel scheduled the depositions to occur in the FTC's Dallas office, even though every deponent is in Ft. Worth. Complaint Counsel asserts that the parties are still in discussions regarding this issue and have not yet reached impasse.


Respondent's request for relief before the parties have reached impasse is inappropriate. The motion for a protective order to require Complaint Counsel to schedule depositions on dates and at times and locations that are mutually convenient is DENIED WITHOUT PREJUDICE.

C. SWNA

Respondent asserts that third party Southwest Neurological Associates ("SWNA") seeks an order extending the deadline for it to respond to Complaint Counsel's subpoenas requesting documents. Complaint Counsel asserts that the parties have not reached impasse regarding the deadline for document production by SWNA.

Respondent's request for relief before the parties have reached impasse is inappropriate. The motion for a protective order to extend the deadline for SWNA to produce documents is DENIED WITHOUT PREJUDICE.

ORDERED:



D. Michael Chappell
Administrative Law Judge

November 14, 2003