

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply.

- A. “Respondent” means North Texas Specialty Physicians (“NTSP”), its officers, directors, employees, agents, attorneys, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates controlled by North Texas Specialty Physicians, and the respective officers, directors, employees, agents, attorneys, representatives, successors, and assigns of each.
- B. “Participate” in an entity means: (1) to be a partner, shareholder, owner, member, or employee of such entity; or (2) to provide services, agree to provide services, or offer to provide services, to a payor through such entity. This definition also applies to all tenses and forms of the word “participate,” including, but not limited to, “participating,” “participated,” and “participation.”
- C. “Payor” means any person that pays, or arranges for the payment, for all or any part of any physician services for itself or for any other person. Payor includes any person that develops, leases, or sells access to networks of physicians.
- D. “Person” means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- E. “Physician” means a doctor of allopathic medicine (“M.D.”) or a doctor of osteopathic medicine (“D.O.”).
- F. “Physician services” means professional services provided to patients by physicians.
- G. “Preexisting contract” means a contract for the provision of physician services, other than the contract identified in Appendix B to this Order, that was in effect on the date of receipt by a payor that is a party to such contract of notice sent by Respondent, pursuant to Paragraph V.A.3 of this Order, of such payor’s right to terminate such contract.
- H. “Principal address” means either (1) primary business address, if there is a business address, or (2) primary residential address, if there is no business address.
- I. “Qualified clinically-integrated joint arrangement” means an arrangement to provide physician services in which:
 - 1. all physicians who participate in the arrangement participate in active and ongoing programs of the arrangement to evaluate and modify the practice patterns of, and

create a high degree of interdependence and cooperation among, the physicians who participate in the arrangement, in order to control costs and ensure the quality of services provided through the arrangement; and

2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.

J. “Qualified risk-sharing joint arrangement” means an arrangement to provide physician services in which:

1. all physicians who participate in the arrangement share substantial financial risk through their participation in the arrangement and thereby create incentives for the physicians who participate jointly to control costs and improve quality by managing the provision of physician services, such as risk-sharing involving:
 - a. the provision of physician services for a capitated rate;
 - b. the provision of physician services for a predetermined percentage of premium or revenue from payors;
 - c. the use of significant financial incentives (*e.g.*, substantial withholds) for physicians who participate to achieve, as a group, specified cost-containment goals; or
 - d. 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 price, 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; and
2. any agreement concerning price or other terms or conditions of dealing entered into by or within the arrangement is reasonably necessary to obtain significant efficiencies through the arrangement.

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, cease and desist from:

- A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any physicians with respect to their provision of physician services:
 - 1. to negotiate on behalf of any physician with any payor;
 - 2. to deal, refuse to deal, or threaten to refuse to deal with any payor;
 - 3. regarding any term, condition, or requirement upon which any physician deals, or is willing to deal, with any payor, including, but not limited to, price terms; or
 - 4. not to deal individually with any payor, or not to deal with any payor through any arrangement other than Respondent;
- B. Exchanging or facilitating in any manner the exchange or transfer of information among physicians concerning any physician's willingness to deal with a payor, or the terms or conditions, including price terms, on which the physician is willing to deal;
- C. Attempting to engage in any action prohibited by Paragraphs II.A or II.B above; and
- D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C above.

PROVIDED HOWEVER, that nothing in this Paragraph II of this Order shall prohibit any agreement involving or conduct by Respondent that is reasonably necessary to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement;

III.

IT IS FURTHER ORDERED that, for three (3) years after the date this Order becomes final, Respondent shall notify the Secretary of the Commission in writing ("Notification") at least sixty (60) days prior to entering into any arrangement with any physicians under which Respondent would act as a messenger, or as an agent on behalf of those physicians, with payors regarding contracts. The Notification shall include the identity of each proposed physician participant; the proposed geographic area in which the proposed arrangement will operate; a copy of any proposed physician participation agreement; a description of the proposed arrangement's purpose and function; a description of any resulting efficiencies expected to be obtained through the arrangement; and a description of procedures to be implemented to limit possible anticompetitive effects, such as those prohibited by this Order. Notification is not required for Respondent's subsequent acts as a messenger pursuant to an arrangement for which this

Notification has been given. Receipt by the Commission from Respondent of any Notification, pursuant to this Paragraph III of this Order, is not to be construed as a determination by the Commission that any action described in such Notification does or does not violate this Order or any law enforced by the Commission.

IV.

IT IS FURTHER ORDERED that Respondent shall:

- A. Within thirty (30) days after the date on which this Order becomes final, send by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
1. each physician who participates, or has participated, in Respondent since January 1, 2000;
 2. each officer, director, manager, and employee of Respondent; and
 3. the chief executive officer of each payor with which Respondent has a record of having been in contact, since January 1, 2001, regarding contracting for the provision of physician services, and include in such mailing the notice specified in Appendix A to this Order;
- B. Terminate, without penalty or charge, and in compliance with any applicable laws, any preexisting contract with any payor for the provision of physician services, other than the contract identified in Appendix B to this Order, at the earliest of:
1. receipt by Respondent of a written request from a payor to terminate such contract, or
 2. the earliest termination or renewal date (including any automatic renewal date) of such contract;

PROVIDED, HOWEVER, a preexisting contract may extend beyond any such termination or renewal date no later than one (1) year after the date on which the Order becomes final, if prior to such termination or renewal date, (a) the payor submits to Respondent a written request to extend such contract to a specific date no later than one (1) year after the date this Order becomes final, and (b) Respondent has determined not to exercise any right to terminate;

PROVIDED FURTHER, that any payor making such request to extend a contract retains the right, pursuant to part (1) of Paragraph IV.B of this Order, to terminate the contract at any time;

- C. Within ten (10) days after receiving a written request from a payor, pursuant to Paragraph IV.B(1) of this Order, distribute, by first-class mail, return receipt requested, a copy of that request to each physician participating in Respondent as of the date Respondent receives such request.
- D. For a period of three (3) years after the date this Order becomes final:
1. distribute by first-class mail, return receipt requested, a copy of this Order and the Complaint to:
 - a. each physician who begins participating in Respondent, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that such participation begins;
 - b. each payor who contracts with Respondent for the provision of physician services, and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that such payor enters into such contract; and
 - c. each person who becomes an officer, director, manager, or employee of Respondent and who did not previously receive a copy of this Order and the Complaint from Respondent, within thirty (30) days of the time that he or she assumes such responsibility with Respondent; and
 2. annually publish a copy of this Order and the Complaint in an official annual report or newsletter sent to all physicians who participate in Respondent, with such prominence as is given to regularly featured articles;
- E. File a verified written report within sixty (60) days after the date this Order becomes final, and annually thereafter for three (3) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may by written notice require. Each such report shall include:
1. a detailed description of the manner and form in which Respondent has complied and is complying with this Order;
 2. copies of the return receipts required by Paragraphs IV.A, IV.C, and IV.D of this Order; and
- F. Notify the Commission at least thirty (30) days prior to any proposed change in Respondent, such as dissolution, assignment, sale resulting in the emergence of a

successor company or corporation, the creation or dissolution of subsidiaries, or any other change in Respondent that may affect compliance obligations arising out of this Order.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission of any change in its principal address within twenty (20) days of such change in address.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in its possession, or under its control, relating to any matter contained in this Order; and
- B. Upon five (5) days' notice to Respondent, and in the presence of counsel, and without restraint or interference from it, to interview Respondent or employees of Respondent.

VII.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date it is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: November 29, 2005

APPENDIX A

Letter to payors with whom NTSP has a contract at the time the Order becomes final, other than a contract listed in Appendix B to the Order – to be sent within thirty (30) days after the Order becomes final

[letterhead of Respondent NTSP]

[name of payor’s CEO]

[address]

Dear _____:

Enclosed is a copy of a complaint and a decision and order (“Order”) issued by the Federal Trade Commission against North Texas Specialty Physicians (“NTSP”).

Pursuant to Paragraph IV.B of the Order, NTSP must allow you to terminate, upon your written request, without any penalty or charge, any contracts with NTSP that are in effect at the time of your receipt of this letter.

Paragraph IV.B of the Order also provides that, if you do not terminate a contract currently in effect with NTSP, the contract will terminate on its termination or renewal date (including any automatic renewal date). However, if the contract terminates on a date prior to **[appropriate date one (1) year after Order became final]**, the contract may be extended at your written request to a date no later than **[appropriate date one (1) year after Order became final]**. The Order became final on **[appropriate date to be filled in]**. If you choose to extend the term of the contract, you may later terminate the contract at any time prior to **[appropriate date one (1) year after Order became final]**.

Any request either to terminate or to extend the contract should be made in writing, and sent to me at the following address: **[NTSP’s address]**.

Sincerely,

APPENDIX B

Pacificare of Texas ANHC/IPA Services Agreement (Professional Capitation/Approved Nonprofit Health (sic) Corporation (dated July 1, 2000), as amended September 1, 2001 and January 1, 2003 [identified as RX 18, including pages RX0018_001 through RX0018_087; also identified by Bates numbers PCT 000924 through PCT 000986 and PCT 000895 through PCT 000918; and Bates numbers FTC-NTSP-PCFC 000327 through FTC-NTSP-PCFC 000389 and FTC-NTSP-PCFC 000298 through FTC-NTSP-PCFC 000321].