

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
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NORTH TEXAS SPECIALTY PHYSICIANS,)
)
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Respondent.)
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Docket No. 9312

NON-PARTY AETNA HEALTH INC.'S RESPONSE IN OPPOSITION TO NORTH TEXAS SPECIALTY PHYSICIANS' MOTION TO COMPEL SUBSTITUTION OF CORPORATE REPRESENTATIVE FOR DEPOSITION

Non-party Aetna Health Inc. ("Aetna") files its Response in Opposition to North Texas Specialty Physicians' Motion to Compel Substitution of Corporate Representative for Deposition. For the reasons below, the motion to compel should be denied.

I. SUMMARY OF ARGUMENT

Despite having deposed non-party Aetna's representative for an entire afternoon regarding a range of substantive issues relevant to the dispute between the Federal Trade Commission and NTSP, NTSP now seeks a second bite at the apple. The purported basis for NTSP's request to subject another Aetna witness to deposition is that Aetna's first witness was "not knowledgeable about the noticed examination topics." A review of the actual deposition testimony – as opposed to NTSP's broad and erroneous characterizations of that testimony – reveals that many of the alleged topics on which the Aetna witness had no knowledge were not even topics identified in the deposition subpoena. Further, the questions asked of the Aetna witness to allegedly "test" his knowledge were patently preposterous, such as how many conversations a particular Aetna employee had with NTSP over a long period of protracted

negotiations characterized by ongoing communications. No witness could possibly answer that question, particularly given that the conversations occurred years ago.

In short, when the 4+ hour long deposition ended, NTSP had obtained a significant amount of relevant, substantive information. As to any issues not covered by the deposition notice, NTSP has no basis to complain. As to any issues arguably covered by the notice and regarding which NTSP now claims it did not obtain information, that failure is due to NTSP's own conduct. NTSP elected to forego any legitimate attempt to test the Aetna witness's knowledge on such issues or to obtain other relevant information.

One reason for NTSP's election not to ask such questions is clear. It realized too late that it would have preferred to depose specific individuals employed by Aetna rather than a corporate representative. To obtain additional depositions, NTSP needed to try to manufacture a record during the corporate representative deposition on which to base its motion to compel. In essence, NTSP seeks to be relieved of the consequences of its own tactical mistake. Having spent time and money in preparing and presenting a corporate representative for deposition along with producing documents to NTSP, Aetna, a non-party, should not be required to invest further time and expense in this matter simply because NTSP failed to take full advantage of the opportunity to depose Aetna's designated corporate representative.

II. BACKGROUND

Nearing the end of fact discovery, on January 12, 2004, North Texas Specialty Physicians ("NTSP") subpoenaed a corporate representative of non-party witness Aetna to appear for deposition on January 27, 2004.¹ The subpoena requested testimony on a variety of topics and

¹ The subpoena is attached as Exhibit A to NTSP's motion to compel. On January 22, 2004, Aetna filed a Motion to Limit the scope of the subpoena. The Motion to Limit is pending. In an effort to cooperate with NTSP, given the January 30, 2004 deadline for the close of fact discovery, Aetna agreed to produce voluntarily a corporate representative for deposition, subject to its pending Motion to Limit.

identified the “relevant time period” for the topics as “January 1, 1997 through the present.” The topics specified such issues as “the negotiation and terms of contracts Aetna Health, Inc. . . . has had or attempted to negotiate with North Texas Specialty Physicians,” the geographic service areas set by Aetna and Aetna’s complaints about or criticisms of North Texas Specialty Physicians,” among others.² Contrary to NTSP’s implications in its motion to compel,³ the deposition notice did not specifically identify “conversations” between Aetna and NTSP over the last 6 years as a topic on which testimony would be requested.⁴ Had NTSP done so, Aetna would undoubtedly have sought to limit the scope of that topic given the plain overbreadth and burdensomeness – not to mention virtual impossibility – associated with asking any deponent to recall the details of every conversation associated with a long-running business relationship.

In response to the subpoena, Aetna designated as its corporate representative Mr. David Roberts, and counsel for NTSP and Aetna agreed that Roberts would appear for deposition on the afternoon of January 28, 2004. Roberts is Network Vice President for Aetna and has had responsibility for contracting and service issues for Aetna in the North Texas area.⁵ Roberts was directly involved in negotiations with NTSP beginning in 2001, including the “re-negotiation” time period when NTSP and Aetna attempted to reach agreement on a new contract. Prior to

² See Ex. A (“Topics for Examination”) attached to NTSP’s motion to compel.

³ NTSP complains in its motion to compel that Roberts was “unable to answer questions relating to conversations . . . with NTSP.” Mot. to Compel at 3.

⁴ Had NTSP listed the topic of “all conversations between NTSP and Aetna since 1997” in its deposition subpoena, Aetna would have moved to limit the scope of the topic on the basis that it was plainly overbroad and unduly burdensome.

⁵ Ex. 1 to this response are relevant excerpts of the rough draft transcript of the January 28, 2004 deposition of Aetna’s corporate representative David Roberts. The rough draft is the only version currently available from the court reporter. The rough draft was provided in two separate documents. To minimize confusion resulting from duplicate page numbers, the two portions of the transcript are attached to this response as Exhibits 1 and 2. The page numbers to which Aetna refers are the numbers appearing on the bottom of each page of transcript preceded by the word “Page.” Ex. 1 at pages 7-9 reflect Roberts’ testimony regarding his job title and responsibilities.

Roberts' arrival in Dallas in 2001, Dr. Chris Jagmin was one of several Aetna employees who dealt with NTSP, including negotiating the original contract between Aetna and NTSP in 2000.⁶

Recognizing that NTSP had sought the deposition of a corporate representative rather than various individual Aetna employees (including employees who had been identified on Complaint Counsel's Preliminary Witness List), counsel for NTSP began asking Aetna's counsel a few days before the scheduled deposition whether Aetna would consider also voluntarily producing two specific individual deponents in addition to a corporate representative: Dr. Jagmin and Mr. Joseph Blanford.⁷ NTSP's counsel acknowledged that Aetna was not required to produce particular witnesses pursuant to a corporate representative notice, but persisted in requesting that Aetna "designate" the representatives that NTSP wanted to depose.

Aetna declined NTSP's request because NTSP had requested a corporate representative, and Aetna determined Roberts would be the appropriate person to testify on behalf of the corporation regarding the topics in the notice. Taking time away from his daily duties for Aetna, Roberts devoted time and effort to educating himself to become reasonably knowledgeable about the deposition topics. With Roberts having invested the time in preparing for the deposition, there was no reason to accede to NTSP's improper request for the depositions of specific individuals who were not even subpoenaed.⁸

Failing to convince non-party Aetna that it should voluntarily subject multiple employees to deposition, NTSP's counsel resorted to another tactic during the January 28 deposition of Roberts. Rather than actually testing the scope of Roberts' knowledge on certain issues in the

⁶ See Ex. 1 at pages 40-41.

⁷ Jagmin was identified on Complaint Counsel's Preliminary Witness List. See exhibit attached to NTSP's motion to compel.

⁸ The request for the depositions of Jagmin and Blanford was in addition to the onerous document subpoena served on Aetna. NTSP's counsel apparently abandoned the request for Blanford's deposition.

subpoena. and trying to obtain relevant information about the period of the initial negotiations between Aetna and NTSP, NTSP's counsel instead asked Roberts questions outside the scope of the deposition subpoena—including a number of ludicrous questions that no person could fully answer. The sole purpose of these questions was to manufacture a record on which to base NTSP's upcoming motion to compel. Notwithstanding NTSP's complaints about Roberts' purported knowledge, NTSP's counsel deposed Roberts for an entire afternoon, with the deposition not ending until well after 5:30 p.m.⁹ NTSP's implication that Roberts had "no relevant knowledge" is belied by the deposition transcript. Roberts provided NTSP with substantial relevant knowledge on the topics specified in the deposition notice.

With respect to particular contracts or issues about which NTSP suggests Roberts may not have had full knowledge, a careful review of the deposition transcript reflects that many of the issues on which NTSP largely bases its motion were not even contracts between Aetna and NTSP. For example, on page 31 of the deposition, cited to and attached by NTSP to its motion to compel without the surrounding pages for context, the contract about which Roberts was questioned was executed in *August 1996* between NTSP and *Harris Methodist Select*.¹⁰ That contract, identified as Ex. 3107 during the deposition, is outside the scope of the subpoena served by NTSP. It is both outside the relevant time period and is not even a contract between Aetna and NTSP. Thus, Roberts' alleged lack of knowledge about this particular contract and its negotiation is irrelevant to the issues raised in NTSP's motion to compel

Similarly, NTSP relies on Roberts' lack of knowledge about whether NTSP had requested an audit of MSM, an organization with which NTSP had a relationship, to demonstrate

⁹ The rough draft transcript in Word format comprises a total of approximately 111 pages of testimony.

¹⁰ See Ex. 1 at pages 26-29 & Ex. 3 (pages 1 and 19 of deposition exhibit 3107, referenced in the deposition testimony).

Aetna's purported failure to comply with the subpoena.¹¹ Nowhere in the deposition notice is Aetna requested to produce a witness to testify about NTSP's dealings with MSM, a third party. NTSP's argument regarding Roberts' lack of knowledge on this issue is a red herring.¹²

Of NTSP's complaints about Roberts' testimony, perhaps the most frivolous is the implication that Aetna was required to produce a corporate representative to testify in detail about all conversations between NTSP and Aetna going as far back as 1997. As a preliminary matter, this topic was not identified in the deposition notice. Even assuming that the topic was reasonably encompassed by other topics in the notice, no witness could possibly provide the level of detail sought by NTSP's questions.¹³ The negotiations between NTSP and Aetna were protracted, and generated almost daily communications among multiple individuals within NTSP and multiple individuals within Aetna. These communications are contained in documents that have been produced to NTSP. Indeed, the corporate representative of NTSP actually interjected during the deposition with a remark about the frequent nature of the communications between NTSP and Aetna.¹⁴ More importantly, NTSP's counsel did not ask the types of follow-up questions to test Mr. Roberts' knowledge, much less attempt to obtain the type of substantive information one would expect from a corporate representative.¹⁵

¹¹ Ex. 1 at pages 38-39.

¹² NTSP's citation to Roberts' testimony regarding deposition exhibit 3112 is similarly disingenuous. This document is a publication by MSM regarding MSM's reimbursement rates. *See* Ex. 4.

¹³ For example, counsel for NTSP asked Roberts "how many conversations" Jagmin had with NTSP about a particular contract. Ex. 1 at page 29.

¹⁴ *See* Ex. 2 at page 12.

¹⁵ For example, NTSP did not question Roberts regarding his understanding of the reimbursement rates to which Aetna and NTSP agreed in connection with the initial contract or whether Aetna believed those rates were competitive. These and other basic questions that would seem to go to the heart of the dispute between the Federal Trade Commission and NTSP were not asked by NTSP's counsel.

At the end of the deposition, NTSP had obtained a great deal of relevant substantive information regarding the topics contained in the deposition notice.¹⁶ That NTSP may have left the deposition unaware of the full scope of the Aetna witness's knowledge was the result either of oversight or of a deliberate, tactical choice by NTSP in its effort to force Aetna to produce multiple individuals for deposition.

III. ARGUMENT AND AUTHORITIES

Aetna complied with its obligations under 16 C.F.R. § 3.33(c) and produced a witness to testify on its behalf "as to matters known or reasonably available to [Aetna]," but only as to those matters described by NTSP with "reasonable particularity" in its deposition subpoena. That is precisely what Aetna did.

NTSP's complaints stem largely from its intentional or unintentional decision to ask questions regarding (1) topics that were not described with reasonable particularity in the notice, and (2) matters that were not reasonably available to Aetna. As demonstrated above, NTSP bases its motion in part on questions unanswered by Aetna's witness with respect to topics not contained in the notice, such as contracts between NTSP and Harris Methodist Select and a document prepared by MSM. Given that these topics were not identified in the notice, it should not have surprised NTSP that Aetna's witness was not prepared to testify regarding those issues.

¹⁶ Included within Exhibit 1 is a sampling of the types of substantive information directly responsive to the subpoena which Roberts provided in deposition testimony. Ex. 1 at page 10 describes the corporate structure and background of Aetna and is responsive to Item 6 in the subpoena, subtopic "The nature of Aetna, Inc." on Complaint Counsel's Preliminary Witness List. Ex. 1 at pages 14-15 and 18-23 describe Aetna's geographic service area and is directly responsive to Item 5 in the subpoena. Ex. 1 at page 43 is the beginning of lengthy testimony regarding NTSP board meetings attended by Roberts in which the issue of a new contract between NTSP and Aetna was discussed. This testimony is directly responsive to Item 1 in the subpoena. Additionally, the testimony excerpts provided by NTSP as Ex. A to Appendix A in support of NTSP's Motion for Leave to File Supplement to Response to Aetna Health, Inc.'s Motion to Quash, or, Alternatively, Limit Subpoena Duces Tecum are illustrative of the substantive information about which Roberts testified. That testimony, designated as "Restricted Confidential – Attorney Eyes Only" and filed under seal, discusses in detail numerous NTSP physicians, their fee structures with Aetna and various measures of their efficiency, among other things. Such information is directly relevant to several items in the subpoena.

Certainly a lack of knowledge regarding unidentified topics is no basis on which to compel Aetna to produce another corporate representative. As the court in *King v. Pratt & Whitney*, 161 F.R.D. 475, 476 (S.D. Fla. 1995), bluntly stated with respect to a deponent's inability to answer questions outside the scope of the matters described in the notice, "[T]hat is the examining party's problem."

With respect to the issue of all the conversations that Aetna employees generally, and Dr. Jagmin specifically, may have had with NTSP in the period prior to 2001, that issue is arguably not even encompassed within the scope of the notice. In any event, the type of detail sought by NTSP's questions is not the type of information that would be "reasonably available" to Aetna or even to the specific individuals involved, given the protracted nature of the negotiations and the frequent ongoing conversations that occurred years ago.

Aetna was not required to designate a witness with "personal knowledge" as the repeated questions of NTSP's counsel during the deposition imply.¹⁷ In interpreting Fed. Civ. P. 30(b)(6), the federal civil rule equivalent of 16 C.F.R. § 3.33(c), the court in *Reed v. Nellcor Puritan Bennett*, 193 F.R.D. 689, 692 (D. Kan. 2000) determined that neither the language nor the purpose of Rule 30(b)(6) imposed a requirement on the corporation to designate someone with "personal" knowledge. Such a requirement would be "at odds with the language and purpose of the rule." *Id.* at 692.¹⁸

¹⁷ In the testimony excerpts provided by NTSP, counsel for NTSP asked Roberts multiple times whether he had "personal knowledge" of various issues. See Ex. B attached to NTSP's motion to compel.

¹⁸ NTSP's reliance on *Resolution Trust Corp. v. Southern Union Co.*, 985 F.2d 196 (5th Cir. 1993) for the proposition that personal knowledge is required is misplaced. In that case, the RTC produced a witness with "no relevant knowledge." *Id.* at 196. Here, not only did Aetna's witness possess substantial relevant knowledge regarding the deposition topics, but he was personally involved during the unsuccessful efforts to re-negotiate the contract between NTSP and Aetna. Had Aetna designated Dr. Jagmin for deposition and not Roberts, NTSP would probably have filed the same motion to compel arguing that Aetna should be required to produce Roberts instead due to Roberts' personal involvement during the re-negotiation efforts.

If NTSP actually desired to obtain substantive knowledge about Aetna's positions with respect to its negotiations with NTSP during the initial contract negotiation, then NTSP's counsel should have asked questions designed to elicit that information. NTSP, however, did not avail itself of the opportunity to understand the scope of the Aetna designee's knowledge. Non-party Aetna and its employees should not be forced to incur further time, effort and expense in providing NTSP with yet another deposition witness.

IV. CONCLUSION

As demonstrated above, non-party Aetna has already complied with its discovery obligations, and it should not be put to the additional expense of designating and preparing yet another corporate representative for deposition. Accordingly, Aetna respectfully requests that the Administrative Law Judge deny the Motion to Compel Substitution of Corporate Representative for Deposition filed by North Texas Specialty Physicians.

Respectfully submitted,

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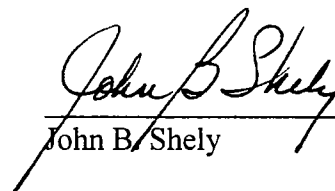

John B. Shely *by per. SAK*

EXHIBIT 1

13:50:00 22 over to healthcare delivery and have been in healthcare
13:50:04 23 delivery to my present job.

13:50:10 24 Q. And what were your job positions when you
13:50:12 25 transitioned to healthcare delivery?

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13:50:18 1 A. Exact titles I -- I don't recall specifically
13:50:24 2 but I was responsible for the network in Oklahoma City
13:50:32 3 from '93 until April or so of '98. And somewhere in
13:50:42 4 that process I became a director of operations at the
13:50:44 5 end -- somewhere in that period. I transferred to
13:50:50 6 Dallas in -- into 90 -- may of '98 as a director of
13:50:56 7 operations, had responsibility for network in that role
13:51:00 8 and then with the purchase of Prudential by Aetna, I
13:51:06 9 was transferred in October of '99 or November of '99
13:51:16 10 back to Oklahoma and then had state wide
13:51:20 11 responsibilities for network until may of 2000. An
13:51:32 12 then in may of 2000 transferred back to Dallas and have
13:51:40 13 had various titles my current title is network
13:51:52 14 vice-president.

13:51:54 15 Q. When you were director of operations in Dallas
13:51:56 16 for Prudential in may of 98 until I'm sorry August of
13:52:04 17 '99 is that correct?

13:52:04 18 A. Uh-huh.

13:52:06 19 Q. Did you have any contact with NTSP?

13:52:12 20 A. As an organization, no. I mean I would have
13:52:18 21 to assume that we had contracts with some of the
13:52:22 22 individual physicians, but as an entity, I don't recall
13:52:26 23 an arrangement with NTSP.

13:52:28 24 Q. Okay. When you came back to Dallas in may of
13:52:38 25 2000, what was your job position?

13:52:42 1 A. You mean other than responsibility for the
13:52:46 2 network?
13:52:46 3 Q. Yeah. You said you were responsibility for
13:52:48 4 the network but I was trying to find out what your job
13:52:52 5 title was?
13:52:52 6 A. Actually at that point it was senior network
13:52:58 7 manager.
13:53:00 8 Q. And what duties did you have?
13:53:04 9 A. At that point network management involved
13:53:08 10 contracting as well as assisting with service issues.
13:53:22 11 Q. And how long were you senior network manager?
13:53:34 12 A. Until October of 2001. That's an approximate
13:53:44 13 date.
13:53:44 14 Q. And what title did you take then?
13:53:48 15 A. Network market head.
13:53:52 16 Q. Okay. And what were your duties as network
13:53:56 17 market head?
13:53:56 18 A. They were the same.
13:53:58 19 Q. Okay. And then how long did you stay as
13:54:06 20 network market head?
13:54:08 21 A. Until some time in mid 03 and then the title
13:54:14 22 changed at that point with the same responsibilities.
13:54:16 23 Q. Okay. To senior -- I'm sorry. Tell me again.
13:54:20 24 A. From -- it changed from market -- network
13:54:24 25 market head to network vice-president.

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13:54:26 1 Q. Network vice-president. Throughout this time
13:54:30 2 you've had the same responsibilities?

13:54:32 3 A. Yes.

13:54:34 4 Q. And since may of 2000, what geographic area
13:54:38 5 had your responsibilities covered?

13:54:40 6 A. It's north Texas and north Texas by the Aetna
13:54:46 7 definition is primarily Parker County to the west all
13:54:56 8 the way to the Arkansas/Louisiana border and south
13:55:02 9 probably as far south as we would go would be course
13:55:06 10 can't area. Some of those areas are HMO service areas
13:55:12 11 an some are HMO and PPO service areas.

13:55:28 12 Q. Now, we've been talking about Aetna in sort of
13:55:30 13 a generic way. What is the name of the company that
13:55:34 14 you work for?

13:55:34 15 A. Aetna Health, Inc.

13:55:40 16 Q. And what other entities are affiliated with
13:55:44 17 Aetna Health, Inc. That you've been working with?

13:55:52 18 A. The organization actually changed. One one
13:55:58 19 owe -- or actually 1231 of 02 we were previously Aetna
13:56:04 20 Health of north Texas and we merged into Aetna Health,
13:56:08 21 Inc. which was the organization in south Texas.

13:56:16 22 Q. Okay. I've seen Aetna health U.S. or
13:56:20 23 something like that. Do you know what that is?

13:56:22 24 A. That is.

13:56:24 25 Q. I'm sorry. What's the formal title Aetna

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13:56:28 1 Healthcare U.S. is that right?

13:56:30 2 A. Aetna U.S. Healthcare is a former company,
13:56:36 3 general company, name.

13:56:44 4 Q. Now is Aetna Health, Inc. A subsidiary of
13:56:46 5 Aetna U.S. Healthcare?

13:56:48 6 A. Yes.

13:56:50 7 Q. And I guess prior to 123102 there would have
13:56:54 8 been two subsidiaries in Texas one Aetna Health Inc. In
13:57:00 9 south Texas an Aetna Health Inc. Of north Texas?

13:57:02 10 A. Aetna Health of North Texas Inc., yes.

13:57:04 11 Q. Any other entities concerning health insurance
13:57:10 12 that Aetna has had in the last four years in Texas?

13:57:30 13 A. There was also a -- I'm not sure of the
13:57:42 14 company name. There was another company in the north
13:57:44 15 Dallas area that was a partnership between Aetna and
13:57:54 16 Baylor. Some period during that four year period we
13:58:00 17 bought out Baylor's interest. That has been several
13:58:02 18 years but it potentially falls into your four year
13:58:08 19 question.

13:58:08 20 Q. What was the volume of business at that
13:58:10 21 partnership?

13:58:10 22 A. It was an HMO (what was the line (.

13:58:22 23 Q. All right. Any other acquisitions that Aetna
13:58:24 24 has had in the north Texas area?

25 A. No.

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13:58:36 1 Q. Is the operational entity for Aetna currently
13:58:42 2 in north Texas as far as PPO and HMO and similar plans
13:58:48 3 Aetna Health, Inc.?

13:58:50 4 A. Yes.

13:58:50 5 Q. And before December 31, 2002 it had been Aetna
13:58:56 6 Health of North Texas, Inc.?

13:58:56 7 A. Correct.

13:59:06 8 Q. What is your educational background?

13:59:10 9 A. I have a BS in pharmacy from Samford
13:59:14 10 University in Birmingham.

14:06:48 23 who's been involved in the process that it's my
14:06:52 24 understanding that all of the documents that have been
14:06:54 25 provided by Aetna to the Federal Trade Commission have

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14:06:56 1 also been provided to counsel for NTSP and the
14:07:00 2 remainder are subject to our motion to quash.

14:07:06 3 MR. HUFFMAN: Okay.

14:07:22 4 Q. I'd like to show you Exhibit 3102. This is
14:07:36 5 information off of the Texas Department of Insurance
14:07:40 6 web site. Are you familiar with that information?

14:08:02 7 A. I am aware that this type of information is
14:08:06 8 displayed by the Department of Insurance, yes.

14:08:10 9 Q. All right. Is this based on information that
14:08:12 10 Aetna gives to the Department of Insurance?

14:08:18 11 A. Either gives or is part of compliance with
14:08:28 12 Department of Insurance.

14:08:28 13 Q. If you'll look at that shaded portion on the
14:08:32 14 second page that encompasses the Dallas and Tarrant
14:08:38 15 Counties, does that area have a name that Aetna uses?

14:08:46 16 A. That is part of the north Texas service area
14:08:50 17 for the HMO. It does not represent our entire service
14:09:00 18 area.

14:09:00 19 Q. And how does the PPO service area compare to
14:09:04 20 the north Texas service area for HMOs?

14:09:08 21 A. It's broader, primarily to the east all the
14:09:12 22 way to the state line.

14:09:16 23 Q. And does the Dallas office of Aetna administer
14:09:20 24 the north Texas service area?

14:09:28 25 A. There are some -- let me answer that this way.

14:09:34 1 Most of the counties we hold rent contracts with, but
14:09:38 2 in some limited counties we actually hold contract with
14:09:42 3 the rental network.

14:09:44 4 Q. Okay. What is a rental network?

14:09:46 5 A. Where some organization already has a network
14:09:50 6 and we actually pay them to access that network.

14:10:00 7 Q. And do you know who who provides the network
8 to Aetna?

14:10:08 9 A. Pro /TPHED is one of those. I would have to
14:10:10 10 look specifically at each county to know if pro net is
14:10:16 11 all of them or some of them.

14:10:18 12 Q. In which of the counties that are shown does
14:10:22 13 Aetna have its own network?

14:10:28 14 A. In the blue counties we hold rent contracts in
14:10:32 15 all of those.

14:10:32 16 Q. That's shown on Page 2?

14:10:34 17 A. Yes.

14:10:34 18 Q. So if we looked at the PPO map, those same
14:10:38 19 counties would be where you have direct contracts and
14:10:40 20 then the new ones that will be where you have rental
14:10:44 21 networks?

14:10:44 22 A. Some we would still have direct contracts and
14:10:46 23 some we have rental.

14:10:52 24 Q. In the various positions that you've held
14:10:56 25 you've been responsible for the entire north Texas what

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14:11:00 1 do you call it a territory?

14:11:02 2 A. We call it a service area.

14:16:00 11 issues with the Dallas Fort Worth metroplex?
14:16:08 12 A. No.
14:16:08 13 Q. Has Aetna always felt that there have been
14:16:10 14 plenty of physicians to contract with who are
14:16:20 15 available?
14:16:20 16 A. Access is governed by Texas regulation and in
14:16:26 17 order to comply with those regulations to even operate
14:16:32 18 in a county you have to file those contracts before you
14:16:36 19 can even operate. So we are in compliance with those
14:16:40 20 regulations.
14:16:40 21 Q. And have you always been?
14:16:42 22 A. Yes.
14:16:42 23 Q. Have you always felt that Aetna has had more
14:16:46 24 than adequate service coverage by all specialties in
14:16:50 25 the north Texas service area?

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14:16:54 1 MR. BLOOM: Objection for what purpose?
14:17:08 2 MS. BRUMBAUGH: If you understand the
14:17:10 3 question. You can answer.
14:17:10 4 A. I -- I'm not sure I understand the question.
14:17:18 5 Q. Is there any sense of the word inadequate that
14:17:20 6 you think would apply to any -- at any service issues
14:17:28 7 by Aetna in the north Texas area?
14:17:36 8 MR. BLOOM: Anywhere in the north Texas
14:17:38 9 area?
14:17:40 10 MR. HUFFMAN: Is that an objection?
14:17:42 11 MR. BLOOM: Yes. Object. Unclear.
14:17:44 12 A. The -- the regulations allow for a number of
14:17:52 13 ways to comply with having an adequate network and so
14:17:58 14 the answer to your question in a broad sense is under

14:18:02 15 those guidelines, we have an adequate network an have

14:18:06 16 always met that network adequacy.

14:18:08 17 Q. Okay. In all the senses of the word adequate?

14:18:14 18 A. According to the regulation.

14:18:16 19 Q. In any sense of the word adequate, have you

14:18:20 20 ever felt that Aetna has had an inadequate service

14:18:24 21 network anywhere in north Texas at any time to your

14:18:26 22 knowledge?

14:18:30 23 A. No.

14:18:30 24 Q. Now, you mentioned the Texas regulations. Do

14:18:34 25 you know what the Texas regulations are for radius of

22

14:18:38 1 treatment by a physician?

14:18:38 2 A. Yes.

14:18:40 3 Q. Can you tell me what those are, please?

14:18:42 4 A. For primary care it's one physician within 30

14:18:48 5 miles and for specialist with an individual specialty

14:18:54 6 type one physician within 75 miles.

14:19:02 7 Q. Now, do you know how many physicians Aetna has

14:19:06 8 under contract if you combine -- if you look at the

14:19:16 9 metroplex?

14:19:16 10 A. Over 6,000.

14:19:26 11 Q. Do you know what the breakdown in that number

14:19:30 12 is PCP's versus specialists?

14:19:34 13 A. It's over 1600 primary care and the balance

14:19:40 14 would be specialists.

14:19:44 15 Q. Has there been any significant change in those

14:19:48 16 numbers over the past six, seven years?

14:19:52 17 A. That network continues to grow, actually I

14:20:08 18 don't remember specific numbers but at one point four

14:20:14 19 years ago, roughly, we had about 5000 physicians and
14:20:22 20 that number has continued to grow each year.

14:20:44 21 Q. Do you know if I were to break it down between
14:20:48 22 Dallas and Tarrant counties, would you know the numbers
14:20:52 23 approximately for your panels?

14:20:58 24 A. I do not.

14:21:00 25 Q. And under Aetna's internal operating policies,

23

14:21:06 1 can a PCP in Dallas County treat a patient in Tarrant
14:21:10 2 County as long as it's within the 30 mile radius?

14:21:12 3 A. Sure.

14:21:14 4 Q. And would the same be true for a specialist in
14:21:18 5 Tarrant County or specialist in Dallas that they can
14:21:20 6 treat anybody within that 75 mile radius?

14:21:26 7 A. Yes.

14:21:26 8 Q. Have you ever done any zip code analyses on
14:21:30 9 the provision of care by providers?

14:21:34 10 A. Annually.

14:21:34 11 Q. Annually, okay. Can you tell me about those.

14:21:40 12 A. What we actually do is take the zip codes
14:21:52 13 relating to the members and chart how far they have to
14:21:58 14 go to meet those access standards and actually that's
14:22:02 15 part of the regulations with TDI.

14:22:08 16 Q. Again I think I've heard of these where you'll
14:22:10 17 actually put them up on a map annual draw radius us an
14:22:12 18 if you have a few outliers that's okay, but you have to
14:22:16 19 have a certain percentage that are within the specified
14:22:20 20 radii?

14:22:22 21 A. Actually, all deviations from the standard
14:22:24 22 have to be explained. To my knowledge there are no

14:22:28 23 deviation exceptions. They've to be explained. In
14:22:30 24 other words, you can't just say I don't have them and
14:22:34 25 I'm 99 percent compliant. You have to explain any

24

14:22:38 1 variance.

14:22:38 2 Q. Okay. And I gather from what you're saying is
14:22:44 3 y'all have had no or almost no exceptions?

14:22:46 4 A. We've not had issues related to that. One of
14:22:50 5 the challenges is the fact that the regulations under
14:22:56 6 Texas code allows the member to live anywhere they want
14:23:00 7 to as long as they work in the service area they can
14:23:02 8 pick a physician. So if they decide to live 200 miles
14:23:06 9 away and work in the service area, then obviously
14:23:10 10 contractually I can't meet that obligation.

14:23:12 11 Q. So for example, when you take a a place like
14:23:16 12 Dallas Fort Worth metroplex, you may have people that
14:23:20 13 are living one place an commuting 20 or 30 miles to
14:23:24 14 another place an so they can really either one of those
14:23:26 15 would apply, would they not?

14:23:28 16 A. It would. It's the member's choice.

14:23:36 17 Q. Now, does Aetna also allow tertiary an
14:23:44 18 quaternary specialists to treat patients state wide?

14:23:50 19 A. I'm not sure I understand the question.

14:23:52 20 Q. well for example if somebody wanted to go to
14:23:54 21 M. D Anderson from Amarillo, would that be allowed
14:23:58 22 under the network?

14:24:02 23 A. Depend on the plan design that the employer
14:24:04 24 has purchased.

14:24:06 25 Q. Okay. Generally are there certain kinds of

25

14:24:12 1 tertiary and quaternary carry where that specialist
14:24:16 2 will have a state wide range of treatment or radius of
14:24:24 3 treatment?

14:24:24 4 A. I think it's difficult to make a blanket
14:24:26 5 statement. There are a number of products that do
14:24:30 6 allow benefits in those environments and different
14:24:32 7 benefits in those environments. So the member's really
14:24:38 8 the decider.

14:24:40 9 Q. Okay. And what would be some of those areas,
14:24:42 10 types of treatment?

14:24:46 11 A. Well I think you mentioned the oncology I
14:24:50 12 think transplants would be another one.

14:24:58 13 Q. What about thoracic surgery, cardiac surgery?

14:25:02 14 A. (Witness shakes head.)

14:25:02 15 Q. No?

14:25:06 16 A. No.

14:25:06 17 Q. April can take down shaking head but then we
14:25:08 18 never know which way you were shaking it.

14:25:10 19 A. Okay.

14:25:12 20 Q. Occasionally some witnesses will shake their
14:25:14 21 head diagonally and so -- let me just show you I believe
14:25:34 22 the regulations that you were referring to and let's be
14:25:40 23 sure we are talking about the same page. Let me show
14:25:44 24 you 31 owe six. . Now are these the radius of
14:25:50 25 treatment regulations you were referring to for the

26

14:25:54 1 State of Texas?

14:26:04 2 A. Yes.

14:26:08 3 Q. Has Aetna follow this approach on the radius
Page 22

14:26:12 4 of treatment over the last four to 7 years?

14:26:16 5 A. Yes.

14:26:16 6 Q. I know that currently I don't believe Aetna
14:26:22 7 has a contract with NTSP is that correct?

14:26:24 8 A. That's correct.

14:26:24 9 Q. Has Aetna been able to provide all the
14:26:28 10 services it needs to its patients without any inch
14:26:32 11 adequacy problems?

14:26:34 12 A. Yes.

14:26:40 13 Q. How often and you may not know this. How
14:26:44 14 often does Aetna update its list of providers on the
14:26:48 15 network?

14:26:48 16 A. Those are updated daily.

14:26:50 17 Q. Daily. So if I -- if Dr. Huffman signed up
14:26:56 18 hopefully within a matter of a day or two, I'd be on
14:27:00 19 and similarly if I left the network?

14:27:00 20 A. It's a little more complicated than that.
14:27:04 21 There's a credentialing process. There's a period of
14:27:08 22 review process.

14:27:08 23 A. An once it goes through that process and
14:27:10 24 there's approval and it goes to load, then it would
14:27:16 25 showed up the next day from that point when we would

27

14:27:18 1 release it to be loaded.

14:27:20 2 Q. who does the credentialing is that an in-house
3 function?

4 A. Yes.

14:27:24 5 Q. Or something you delegate outside?

14:27:26 6 A. We have an in-house function and in some cases
14:27:28 7 we actually delegate credentialing.

14:32:18 16 agreements to say how those payments would occur.

14:32:22 17 Q. Reciprocity?

14:32:24 18 A. (Witness nods head.). Yes.

14:32:24 19 Q. And could you explain what a recipricol or
14:32:30 20 reciprocity agreement is?

14:32:32 21 A. It just indicates that if they saw a member
14:32:34 22 outside of the terms of that global contract, that
14:32:42 23 we've agreed to pay a predetermined rate for those
14:32:46 24 services.

14:32:46 25 Q. And has the purpose of the reciprocity

30

14:32:50 1 contract to -- so when the person that's under an
14:32:54 2 arrangement goes to another area, that out of service
14:33:00 3 area treatment will be done at a certain level then
14:33:04 4 charged back against the cap reciprocally if the other
14:33:08 5 area has a patient that comes here that, payment would
14:33:12 6 then be at the reciprocal rate an then charged back
14:33:16 7 against the cap?

14:33:18 8 A. That is one scenario. The other scenario
14:33:22 9 would be if a fever service member in Dallas or
14:33:30 10 Arlington that's not part of that arrangement elects to
14:33:34 11 go see one of those physicians without regard to
14:33:38 12 capitation and that physician provides services, then
14:33:42 13 we wanted to ensure payment.

14:34:02 14 Q. We're going to start getting through
14:34:04 15 contracts. Why don't we take a short break (Off the
14:41:28 16 record.)

14:41:28 17 Q. I'm going to show you some contracts and ask
14:41:32 18 what your knowledge is of them. I'm going to show you
14:41:38 19 31 owe seven?

14:43:04 20 MS. BRUMBAUGH: Am I right that this is
14:43:06 21 outside the scope of the notice with the time period?
14:43:12 22 I'm just trying to figure out.
14:43:14 23 MR. HUFFMAN: It would carry forward
14:43:14 24 during the time period.
14:43:16 25 MS. BRUMBAUGH: Okay.

31

14:43:20 1 Q. What is your knowledge of this contract?
14:43:26 2 A. I don't have any knowledge of this contract.
14:43:32 3 Q. As you can tell this is a risk contract
14:43:36 4 between select and NTSP. Was select -- was this
14:43:42 5 contract activated in order to provide services to
14:44:52 6 Aetna?
14:44:52 7 A. I'm sorry. I can't speak to this.
14:44:56 8 Q. Would this be something Dr. Jagmin would know?
14:45:04 9 A. I -- I don't have any idea. I mean my -- my
14:45:10 10 scan of this is that this is a contract between NTSP
14:45:16 11 and med -- or Harris.
14:45:24 12 Q. Was Harris Methodist select providing services
14:45:26 13 to Aetna during this time period?
14:45:30 14 A. Harris Methodist was providing services to
14:45:34 15 Aetna members under a contract but this is not that
14:45:38 16 contract.
14:45:38 17 Q. Do you know whether or not this contract was
14:45:40 18 used to service Aetna members?
14:45:42 19 A. I don't know.
14:45:44 20 Q. Would Dr. Jagmin know that?
14:45:48 21 A. I don't know.
14:45:50 22 Q. Well who would at Aetna would know that?
14:46:04 23 A. Does this say Aetna anywhere? I mean I -- I'm

14:46:10 24 hand add 40 page document. I don't see Aetna anywhere.
14:46:12 25 So I'm trying to get the correlation.

32

14:46:14 1 Q. Well I'm trying to get the correlation too.
14:46:18 2 So my question is who at Aetna would know whether or
14:46:20 3 not this contract was used to service Aetna patients?

14:46:24 4 A. And without seeing the specific reference to
14:46:28 5 Aetna, I don't know if anyone at Aetna will know the
14:46:32 6 answer.

14:46:32 7 Q. Well who would know if it was -- was or was
14:46:36 8 not used? That's the question.

14:46:46 9 A. Then I would have to say that Dr. Jagmin would
14:46:52 10 know. Or not know.

14:46:56 11 Q. Let me show auto document I'm marking as
14:46:58 12 Exhibit 31 owe 8. . Can you tell me what that is,
14:49:08 13 please? Can you tell me what this is, please?

14:49:10 14 A. This is a contract between Aetna and Harris
14:49:16 15 Methodist select for a risk arrangement.

14:49:26 16 Q. And do you know what conversations, if any,
14:49:30 17 Aetna people had with NTSP concerning this?

14:49:36 18 MS. BRUMBAUGH: Objection to the form of
14:49:36 19 the question.

14:49:38 20 MR. BLOOM: Join.

14:49:44 21 A. I'm not aware.

14:49:50 22 Q. Would of this been something that Dr. Jagmin
14:49:52 23 would have dealt with?

14:50:02 24 A. Yes.

14:50:04 25 Q. And you're aware, are you not, that this

33

14:50:08 1 particular notice of contract offer became a point of
14:50:12 2 litigation between NTSP and select?

14:50:14 3 A. Yes.

14:50:14 4 Q. And Dr. Jagmin would have handled those
14:50:16 5 conversations?

14:50:16 6 A. Yes.

14:50:24 7 Q. Do you know how many of those conversations he
14:50:26 8 had?

14:50:26 9 A. Do I not.

14:50:42 10 Q. Let me show you Exhibit 31 over nine. . Tell
14:50:56 11 me what this is, please.

14:51:48 12 A. This appears to be the contract between Harris
14:51:54 13 Methodist and the select providers.

14:51:56 14 Q. Okay. Do you know what conversations Aetna
14:51:58 15 had with NTSP about this contract?

14:52:02 16 A. I do not.

14:52:04 17 Q. Is that something Dr. Jagmin would know?

14:52:06 18 MS. BRUMBAUGH: Object to the form of the
14:52:14 19 question.

14:52:14 20 A. I'm not aware of any conversations.

14:52:16 21 Q. Do you know whether or not Dr. Jagmin had
14:52:20 22 conversations with NTSP on this topic?

14:52:22 23 A. I do not.

14:52:28 24 Q. Is this a risk arrangement?

14:52:32 25 A. Appears to be a risk arrangement, yes.

34

14:52:34 1 Q. What involvement did Aetna have with this risk
14:52:38 2 arrangement prior to the time of its being sent out?

14:52:48 3 MS. BRUMBAUGH: Object to the form of the

15:11:16 9 trans at that point. No. I didn't hear any of those
15:11:18 10 things. But in that meeting in may there were
15:11:22 11 discussions about changes in the contract and this
15:11:26 12 contract at that point would have been less than a year
15:11:32 13 old. Just created concerns and it precipitated in an
15:11:38 14 audit.

15:11:38 15 Q. Okay. So then Aetna did the audit the June 12
15:11:44 16 audit uncovers the embezzlement and I guess a number of
15:11:46 17 cash flow problems is that correct?

15:11:48 18 A. Correct.

15:11:50 19 Q. Did you make a report to TDI?

15:11:50 20 A. Yes.

15:11:52 21 Q. Okay. Then TDI came in and put them under
15:11:54 22 supervision is that correct?

15:11:54 23 A. That's correct.

15:11:56 24 Q. Some time --

15:11:56 25 A. Now whether we instigated that or some other

44

15:12:00 1 party, I don't know. But TDI showed up first part of
15:12:04 2 July. We reported it.

15:12:06 3 Q. Okay. And were you aware as to whether or not
15:12:12 4 anyone had requested an audit prior to the time you got
15:12:16 5 there of MSM?

15:12:16 6 A. Not that I'm aware of.

15:12:18 7 Q. Okay. Were you aware that NTSP had requested
15:12:20 8 an audit?

15:12:24 9 A. No.

15:12:24 10 Q. Okay. Would that be something Dr. Jagmin
15:12:26 11 would know?

15:12:26 12 MS. BRUMBAUGH: Objection to the form of
Page 38

15:12:28 13 the question. How would he know that.

15:12:32 14 A. I don't know the answer to that.

15:12:32 15 Q. All right.

15:12:36 16 Q. So whatever discussions went on between Dr.

15:12:38 17 Jagmin and NTSP about the need for an audit or MSM

15:12:42 18 difficulties, Dr. Jagmin is the person we should be

15:12:46 19 asking?

15:12:46 20 A. Yes. Because I don't have knowledge.

15:12:54 21 Q. TDI then puts MSM under supervision then TDI

15:12:58 22 short there I thereafter goes into bankruptcy is that

15:13:02 23 correct?

15:13:02 24 A. TDI took over the supervision and began

15:13:06 25 working with the parties to restructure the

45

15:13:10 1 relationship with all the parties involved and actually

15:13:18 2 had a meeting to try to finalize that arrangement and

15:13:24 3 for whatever reason wasn't successful and the very next

15:13:32 4 week was the filing for bankruptcy.

15:13:52 5 Q. Okay. Going back if we can to Exhibit 3112

15:13:58 6 and this is now that I understand that you didn't come

15:14:00 7 until after this maybe I'm barking up the wrong tree.

15:14:04 8 But any changes in the risk reimbursement structure

15:14:08 9 would that be something Dr. Jagmin would know?

15:14:10 10 MS. BRUMBAUGH: Object to the form of the

15:14:12 11 question.

15:14:14 12 A. If there is knowledge, Dr. Jagmin would know.

15:14:20 13 Q. All right. And when you came in, had you

15:14:24 14 looked at how the reimbursement structure had changed

15:14:28 15 over the last year?

15:14:40 16 A. I'm trying to recall. I don't recall looking

15:14:46 17 at what the historical reimbursements had been prior to
15:14:52 18 what we were dealing with at that point.

15:14:54 19 Q. Let me go back. I think you indicated that in
15:15:00 20 June of 2001 the contract between Aetna and MSM was
15:15:06 21 only about a year old?

15:15:08 22 A. It was a renewed contract and I think it was
15:15:12 23 about a year old, yes.

15:15:12 24 Q. Okay. And based on that is it your belief
15:15:16 25 that the rate structure between Aetna and MSM had not

46

15:15:20 1 changed in that year?

15:15:22 2 A. It would be my impression, based on what I
15:15:26 3 understood, that that would have changed in the summer,
15:15:30 4 not in December, which is the disconnect I have.

15:15:34 5 Q. Okay. So the reference that's being made here
15:15:38 6 very likely is a change to the risk reimbursement
15:15:40 7 structure between MSM and the participating physicians?

15:15:44 8 A. Right.

15:15:44 9 Q. Okay.

15:15:50 10 A. That's likely.

15:16:04 11 Q. Let me show you Exhibit 3113. Can you tell me
15:16:28 12 what this is?

15:16:30 13 A. This is the agreement between NTSP and Aetna.

15:16:46 14 Q. Okay. And were you involved in this contract?

15:16:54 15 A. Not in the negotiation of this contract, no.

15:16:56 16 Q. All right. Was that something handled by Dr.
15:17:02 17 Jagmin?

18 A. Yes.

15:17:02 19 Q. Who else other than Dr. Jagmin handled that
15:17:06 20 discussion?

15:17:06 21 A. I'm sure Selena burns was involved at that
15:17:12 22 point. We had a very different management structure
15:17:14 23 than we have today and she would have been the general
15:17:20 24 manager as well as potentially others in the regional
15:17:24 25 office. It's one of the focus of running a market in

47

15:17:30 1 the regional office.

15:17:32 2 Q. Would you explain that.

15:17:34 3 A. We have plenty of people to help you.

15:17:38 4 Q. Are there a certain lack of centralization of
15:17:42 5 authority?

15:17:42 6 A. No. No no no. That's not what I'm saying. I'm
15:17:44 7 just saying it's a little closer to between floors.

15:17:52 8 Q. Okay. Again, my usual question. If I wanted
15:17:58 9 to know the details of what was said as this contract
15:18:02 10 was worked up, is that something I should be talking to
15:18:06 11 Dr. Jagmin about?

15:18:06 12 A. Yes.

15:18:08 13 MS. BRUMBAUGH: Object to the for the
15:18:10 14 question. Mr. Roberts is the corporate representative.
15:18:14 15 You can ask him questions about that and every
15:18:18 16 conversation that may have ever occurred. He's
15:18:20 17 prepared to answer question.

15:18:22 18 Q. Sure. What was the first conversation Dr.
15:18:26 19 Jagmin had?

15:18:26 20 MS. BRUMBAUGH: I said if you can ask him
15:18:28 21 questions other than that. That's not the purpose
15:18:30 22 after corporate representative. I doubt Dr. Jagmin
15:18:32 23 could tell you every conversation he had. I mean
15:18:36 24 that's unreasonable and unrealistic.

15:20:04 1 A. Yes.

15:20:06 2 Q. When was that sent?

15:20:08 3 A. I believe that would have been September.

15:20:16 4 Q. September of 2001?

15:20:16 5 A. Yes.

15:20:20 6 Q. Effective through when?

15:20:22 7 A. January 31st of 2002.

15:20:30 8 Q. Now, have you ever attended a meeting of NTSP,

15:20:36 9 a board meeting of NTSP?

15:20:38 10 A. Yes.

15:20:38 11 Q. How many board meetings?

15:20:40 12 A. Three. One in October and one in November an

15:20:44 13 one in December.

15:20:52 14 Q. What was said in the late October meeting?

15:20:56 15 MS. BRUMBAUGH: Object to the form of the

15:20:56 16 question.

15:21:02 17 A. Are you asking me what was the intent?

15:21:04 18 Q. Well, no. What was the purpose of your coming

15:21:08 19 to the board meeting?

15:21:08 20 A. The purpose of the discussion was to talk

15:21:14 21 about potential options for negotiating the contract.

15:21:18 22 Q. And obviously the NTSP board was there. You

15:21:22 23 were there. Who else was there?

15:21:26 24 A. Karen was there. I don't remember

15:21:30 25 specifically who else would have been there.

50

15:21:32 1 Q. Do you remember any of the discussion at the

15:21:34 2 board meeting?

15:21:42 3 A. It seems -- I seem to recall that there was a

15:21:46 4 discussion about the current contract and some of the

Exhibit 2

EXHIBIT 2

01:03:06 15 question.

01:06:20 16 A. There have been no conversations with anyone
00:04:28 17 that I recall other than Karen or you know potentially
01:04:46 18 at times she would have someone on her staff on the
01:06:26 19 call but Karen was on the call.

20 Q. Okay. Do you recall any specific calls with
21 Karen that we haven't covered anything about those?

22 A. We had them just about every day.

23 MS. VAN WAGNER: They were frequent.

24 A. I mean the short answer to that question is we
00:28:48 25 were in constant contact and we were in constant

14

00:00:16 1 discussions about understanding the data we were
00:00:06 2 looking at.

00:00:16 3 Q. Were these calls generally about the data and
4 what NTSP believed were the efficiency gains that it
5 could bring?

00:00:02 6 A. Yes.

7 Q. Anything else you can recall about those
8 conversations?

9 A. No.

10 Q. I know this was two years ago three years ago
11 you've and he had what 10,000 telephone calls since?

00:08:12 12 A. I don't recall anything else that's not
00:00:36 13 summarized here.

00:00:12 14 Q. Do you recall any specific conversations with
15 Miss Van Wagner about rates?

00:00:16 16 A. Yes.

00:09:06 17 Q. What do you recall?

18 A. Well, Karen and I were the ones in discussions
Page 12

Exhibit 3

EXHIBIT 3

SELECT CONTRACT NO. _____
NORTH TEXAS SPECIALTY PHYSICIANS
PAYOR: HARRIS METHODIST TEXAS HEALTH PLAN, INC.

NOTICE OF PAYOR CONTRACT OFFER
SELECT PLUS SPECIALTY GROUP ("GROUP")

Name of Payor: HARRIS METHODIST TEXAS HEALTH PLAN, INC. ("HMO")

HMO is a duly licensed and federally qualified health maintenance organization which provides health care services to its Members. Harris Methodist Select ("Select") is a related organization of HMO and is its exclusive provider of professional medical services, either directly or indirectly through other contractual arrangements with health care professionals. Select desires to contract with Group for the delivery of professional medical services for such Members upon the terms and conditions set forth herein. As used herein, "Group" means North Texas Specialty Physicians ("NTSP"), a Texas Section 5.01(a) Non-Profit Health Care Corporation, which satisfies the criteria established for Select Plus Specialty Groups and has agreed to participate as a Select Plus Specialty Group in the Premier Plus Network established by HMO and Select which has been developed to deliver high quality health care services at a reasonable cost. Under the Premier Plus Network, Primary Care Physicians that designate one Select Plus Specialty Group affiliated with Premier Plus Hospital(s) will receive higher reimbursement under Select Plus Fee Schedules and the opportunity to participate in the risk sharing arrangements described in Exhibit "A" of this Notice. Select's new Select Plus Allowable Fee schedule for Select Plus Specialty Groups will be effective October 1, 1995. All claims submitted by the members of Group to Select for the period October 1, 1995 until March 31, 1996, will be finally settled in a lump sum payment to be paid within 45 days of the date this Offer is executed by the last party to sign; all claims for the period April 1, 1996 until June 30, 1996 will be finally settled in a lump sum payment to be paid by December 1, 1996. The claims will not be re-adjudicated; instead the parties will calculate the additional revenue that would have been paid to Group under the Select Plus Fee Schedule.

I.

PAYOR CONTRACT PROVISIONS

This Notice of Payor Contract Offer ("Offer") is given to Group pursuant to the Risk Contracting provisions set forth below. The HMO Payor Contract between Select and HMO is available for inspection at Select's main office during normal business hours, Monday through Friday. If assistance is needed regarding the HMO Payor Contract, a Select representative may be contacted at (817) 462-6400 or (800) 945-0430.

MSM 014171

Ex 3107

SELECT CONTRACT NO. _____
NORTH TEXAS SPECIALTY PHYSICIANS
PAYOR: HARRIS METHODIST TEXAS HEALTH PLAN, INC.

8.12 Execution in Counterpart. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

GROUP:

SELECT:

NORTH TEXAS SPECIALTY PHYSICIANS

HARRIS METHODIST SELECT

By: [Signature]
Name: W. S. Vance
Title: Chairman
Date Executed: 8/29/96

By: [Signature]
Name: Neil A. Godben
Title: Executive Vice President/President
Date Executed: 8/29/96 all 67

JWM/pae
SEL13:NTSP-SPC.NOT
8-26-96

Exhibit 4

EXHIBIT 4

MSM Update

Ramiro Cavazos, MD, Chairman, MSM Board of Trustees

Tiffany Handshy, MSM Update Editor, Medical Pathways

Claims Processing Moves to Fort Worth Effective 2/15/2001

Effective February 15, 2001, Medical Select Management ("MSM") will be processing professional claims in our Fort Worth, Texas office. At the earliest possible date, provider offices are required to bill with Medicare UPIN (PIN#, Box 33). Such requirement will be a clean claim requirement starting March 1, 2001.

MSM request that providers submit claims electronically starting January 2, 2001 with above requested Medicare UPIN using either NEIC Payor ID # 13375, 13377, or 13378. You may contact Claims Customer Service at 800-309-9675 if you wish to test electronic claims submissions.

If you must submit paper claims, please mail to:

Medical Select Management
PO Box 901030
Fort Worth, Texas 76101-2030

We believe that processing claims locally will help MSM be more accountable and accessible to meet your needs regarding claims payment.

North Texas Eye Associates (NTEA)

Medical Select Management has entered into an agreement with North Texas Eye Associates effective November 1, 2000, for all MSM HMO members including Aetna HMO, PacificCare HMO and Secure Horizons. These physicians may be accessed for office visits without prior authorization. Surgical procedures will continue to require precertification.

Please refer to the MSM Alert of December 14th for a complete list of the NTEA physicians participating with MSM. The list also contains specialty and office information.

Aetna U.S. Health Care Precertification Process

In response to your requests, MSM will continue to authorize/precertify outpatient or inpatient elective surgeries, as well as, hospital admissions for Aetna U.S. Health Care patients. MSM will submit the authorization to AUSHC to facilitate their concurrent review of hospital days. This announcement was also communicated in the MSM Alert of December 15th.

2001 Reimbursement Rates

Provider Agreement Amendment letters detailing the changes to the current risk reimbursement structure were mailed on December 1st. The new rates will be effective January 1, 2001, and were also discussed in detail in the Monday Morning Fax of November 13th. Please contact your Provider Relations Representative if you did not receive an amendment or have questions regarding the amendment's content.

Referral Process Update

MSM is working diligently to continuously improve our referral processes. We have recently discovered some technical issues with our fax and phone lines, which have negatively impacted our referral efforts. We anticipate being current on referrals and fully achieving turnaround standards within the next two weeks.

Thank you for your patience and support as we identify and resolve these issues.

On Site Evaluations and Medical Records Audit Tools

MSM performs On Site Facility Evaluations and Medical Record Documentation Audits as part of our ongoing Quality Improvement and Credentialing programs.

Our Quality Management Department has recently revised the audit tools to simplify the process and eliminate unnecessary elements. The documents have been approved by the appropriate MSM committees and are ready for implementation. Your Provider Relations Representative will provide copies of these new tools during their next office visit. Or you may call your Provider Relations Representative and request the forms be faxed to you.

Comments? Questions?

Send MSM Update comments and questions to:
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