

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

North Texas Specialty Physicians,
a corporation.

Docket No. 9312

NORTH TEXAS SPECIALTY PHYSICIANS' MOTION *IN LIMINE*

Respondent North Texas Specialty Physicians (“NTSP”) moves *in limine* for an order excluding certain evidence or testimony from any witness called to testify at the hearing in this proceeding.

I. INTRODUCTION

During the discovery phase of this proceeding, NTSP sought discovery from five third-party payors, including documents and data related to cost and quality-of-care information. NTSP wanted that discovery to prepare analyses that would help it defend against Complaint Counsel’s claims. In response to NTSP’s discovery requests, the third-party payors filed motions to quash or to limit the scope of NTSP’s subpoenas duces tecum and objected to the specific document requests. The Administrative Law Judge (“ALJ”) entered orders on the third-party payors’ motions, granting and denying them in part. Of particular note, the ALJ ruled that the third-party payors did not have to provide claims data produced to the Texas Attorney General. Based on that ruling, the third-party payors did not produce their claims information.

Although the third-party payors objected to the production of their claims data to NTSP, NTSP later learned during depositions that several payors had voluntarily provided data or analyses to Complaint Counsel in response to informal requests. Some of those analyses were

not initially produced to NTSP. Indeed, NTSP did not learn about some analyses until it deposed the third-party payors in late January 2004. Based on these events, NTSP moves *in limine* for an order that excludes certain testimony and evidence from the hearing.

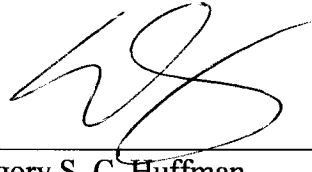
II. ARGUMENT

NTSP asks the ALJ to instruct Complaint Counsel, their witnesses, and the third-party payors not to mention, ask any question about, refer to, or discuss any of the following matters:

1. Any and all testimony or evidence regarding claims, cost, or quality data, documents, or information responsive to NTSP's subpoenas duces tecum to the third-party payors that were not produced to NTSP.
2. Any and all testimony or evidence regarding claims, cost, or quality data, documents, or information that the third-party payors provided to Complaint Counsel, but not to NTSP.
3. Any and all testimony or evidence regarding analyses or documents prepared by the third-party payors for Complaint Counsel, when the underlying data or information upon which those analyses or documents are based has not been provided to NTSP.
4. Any and all testimony from a witness that was not properly or timely disclosed on Complaint Counsel's witness list.

FOR THESE REASONS, and those set forth in the accompanying memorandum, NTSP requests that this motion be granted and that the ALJ exclude any and all testimony or evidence referenced above. NTSP also requests all other and further relief to which it may be justly entitled.

Respectfully submitted,



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

Thompson & Knight L.L.P.
1700 Pacific Avenue, Suite 3300
Dallas TX 75201-4693
214.969.1700
214.969.1751 - Fax
gregory.huffman@tklaw.com
william.katz@tklaw.com
gregory.binns@tklaw.com

Attorneys for North Texas Specialty
Physicians

CERTIFICATE OF SERVICE

I hereby certify that on March 2nd, 2004, I caused a copy of the foregoing document 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

Barbara Anthony (via certified mail)
Director
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 (original and 2 copies via Federal Express)
Donald S. Clark
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue NW
Washington, D.C. 20580

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

