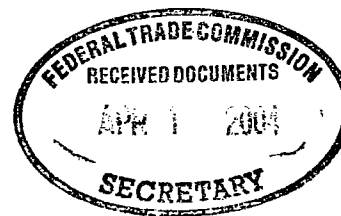


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



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In the Matter of )  
 )  
 )

North Texas Specialty Physicians, )  
Respondent. )  
 )  
\_\_\_\_\_ )

Docket No. 9312

**ORDER ON MOTIONS SEEKING TO COMPEL RESPONDENT TO NARROW ITS  
DOCUMENT DESIGNATIONS AND FURTHER EXTENDING  
DEADLINE FOR FILING MOTIONS FOR *IN CAMERA* TREATMENT**

**I.**

On March 24, 2004, nonparties United HealthCare of Texas, Inc., Cigna HealthCare of Texas, Inc., ("Cigna"), Aetna Health Inc. ("Aetna"), PacifiCare of Texas, Inc., ("PacifiCare"), Humana Health Plan of Texas, Inc. ("Humana"), and Blue Cross Blue Shield of Texas (BCBSTX"), (collectively, the "nonparty payors"), filed a joint motion to compel Respondent to narrow its document designations and to extend the time for the nonparty payors to file motions for *in camera* treatment. ("Joint Motion"). Also on March 24, 2004, Cigna, PacifiCare, and Aetna filed separate Joinders in the nonparty payors' motion. Humana and BCBSTX also filed separate Joinders, on March 25 and March 26, 2004, respectively.

By Order dated March 25, 2004, Respondent North Texas Specialty Physicians ("NTSP") was ordered to file its response by March 29, 2004. NTSP filed its opposition on March 29, 2004. Also on March 29, 2004, Complaint Counsel filed a response in support of the nonparty payors' motions.

For the reasons set forth below, the motions are GRANTED IN PART and DENIED IN PART.

**II.**

As required by the Scheduling Order, Respondent sent letters of designation to the nonparty payors stating its intent to offer into evidence at trial documents produced by nonparty payors that were designated by the producing parties as either "confidential" or "restricted confidential, attorney eyes only," pursuant to the terms of the Protective Order. (*E.g.*, Exhibit A to Joint Motion) (hereinafter "designation letters"). The nonparty payors assert that the letters of designation sent by Respondent to the nonparty payors were overbroad. For example, the

nonparty payors assert that NTSP's notice to United was a list of over 90% of United's production and that NTSP designated well over 4,000 pages of documents as potential exhibits. The nonparty payors assert that some of Respondent's designated documents are duplicates of the same document that have different Bates numbers. The nonparty payors also assert that NTSP included blanket designations to the confidential portions of deposition testimony provided by witnesses from nonparty payors, without reference to any transcript page or line citation.

In addition, the nonparty payors charge that NTSP has, in violation of the Protective Order, failed to specifically identify to whom the documents or information designated as "restricted confidential, attorney eyes only" would be disclosed at trial.

The nonparty payors seek an order compelling NTSP to revise its designations of documents to reflect documents produced by nonparty payors that NTSP actually intends to use at trial and to specifically identify the individuals to whom NTSP wishes to show those documents. The nonparty payors also seek an extension of the deadline for filing motions for *in camera* treatment until after Respondent has narrowed its document designations.

Respondent asserts that the nonparty payors have designated at least 90% of the documents they produced with a confidentiality designation. Respondent argues that the overbreadth of the nonparty payors' use of the confidential designations prevents Respondent's counsel from disclosing the overwhelming majority of the documents produced by the nonparty payors to any individual within Respondent's organization. Thus, Respondent asserts, Respondent's outside counsel has been severely hampered in its ability to prepare its defense and this has negatively impacted Respondent's ability to make the best assessment of the documents it intends to use with each witness. Respondent further asserts that it cannot predict each document that it will need at the trial, as Respondent puts on its case second and, thus, must be prepared to meet the evidence presented by Complaint Counsel.

In addition, Respondent asserts that its designation letters to the nonparty payors setting forth Respondent's intent to show documents designated as "restricted confidential, attorney eyes only," adequately appraise the nonparties of the individuals to whom Respondent intends to show such documents at trial.

### III.

It is reasonable to expect that the nonparties' expansive use of the "confidential" and "restricted confidential, attorney eyes only" designations would lead to NTSP's overdesignation of these documents for use at trial. A review of the designations provided by Respondent to the nonparties indicates an apparent overdesignation of documents to be used at trial. Such overdesignation then leads to unnecessary requests for *in camera* treatment by those parties who have produced documents. The designation letters should be based on the exhibit lists. The Scheduling Order requires the final exhibit lists to "represent counsels' good faith designation of all trial exhibits." To comply with this requirement, NTSP shall review its existing document

designations and shall narrow those designations to include only those documents for which NTSP has a good faith basis it intends to use at trial. Exhibits or designations of documents that are duplicates of the same document with different bates numbers are not allowed. With respect to deposition testimony, it is not sufficient to designate an entire deposition transcript.

The designation letters Respondent provided to nonparty payors with respect to documents or information designated by the nonparty payors as "restricted confidential, attorney eyes only" provide bates range numbers of the documents Respondent intends to use and state that Respondent intends to disclose those documents at trial to (1) expert witnesses, (2) employees or representatives of the specific nonparty payor to whom the letter was sent, and (3) witnesses not employed by the specific non party payor to whom the documents, as shown on the face of the document, have been given access to the document. In this case, Respondent's description of the documents and intent to disclose documents only to a known, finite number of individuals is sufficient at this point before trial.

#### IV.

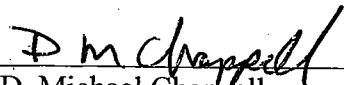
The motions of the nonparty payors are GRANTED IN PART and DENIED IN PART.

NTSP is not required to provide further specificity to the nonparty payors about the documents or the individuals to whom it wishes to show documents at trial.

NTSP is required to narrow its document designations in accordance with this Order by April 7, 2004.

The nonparty payors' deadline for filing motions for *in camera* treatment is extended until April 12, 2004. Any oppositions shall be filed by April 16, 2004. The nonparty payors are again cautioned that strict requirements must be met before *in camera* treatment can be granted. See Protective Order, ¶ 12; Order On Non-Parties' Motions for *In Camera* Treatment of Documents Listed on Parties' Exhibit Lists, November 1, 2002 (available at [www.ftc.gov/os/adjpro/d9300](http://www.ftc.gov/os/adjpro/d9300)).

ORDERED:

  
D. Michael Chappell  
Administrative Law Judge

Date: April 1, 2004