PUBLIC

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of NORTH TEXAS SPECIALTY PHYSICIANS, a corporation.	**DOCKET NO. 9312**

To: The Honorable D. Michael Chappell

Administrative Law Judge

COMPLAINT COUNSEL'S PROPOSED FINDINGS OF FACT

Respectfully submitted,

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April 14, 2004

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RECORD REFERENCES

References to the record are made using the following abbreviations and citation forms:

CX - complaint counsel exhibit

NTSP - NTSP exhibit

Complaint - Complaint of the Federal Trade Commission.

In camera material and citations are in italics.

Pursuant to the Scheduling Order, Complaint Counsel respectfully submits its proposed findings of fact. In submitting these proposed findings, Complaint Counsel reserves the right to add additional factual material at trial as necessary, and in particular to rebut any factual statements identified by NTSP.

I. Introduction

The Federal Trade Commission's complaint in this matter charges that North Texas Specialty Physicians ("NTSP") has engaged in conduct that violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

This matter concerns a horizontal agreement to set the price of reimbursement rates for physician services as established by NTSP, an independent physicians association (IPA). According to the Complaint, NTSP polls its members to establish the "minimum acceptable" rates, and this mechanism allows NTSP to arrive at supra-competitive baseline prices prior to negotiations with payors. The Complaint also states that NTSP at times has exercised collective bargaining power by threatening and departicipating insurer health plans. As the Complaint concludes, NTSP illegally aggregates the bargaining power of its members with the purpose and effect of raising prices above competitive rates.

II. The Health Care Industry: The Development of Managed Care, Physician Contracting, and IPAs.

1. Managed care began as an attempt by large employers and the federal and state governments to use Health Maintenance Organizations (HMOs) to control the rapidly rising costs of health care. The number and size of HMOs at first grew slowly after passage of the Federal HMO Act in 1973, then grew rapidly from the mid-1980s to the late 1990s. CX1150 at 5.

2. There are a variety of ways in which HMOs may contract with physicians. HMOs may contract directly with individual physicians or they may contract with physician organizations (IPAs) and moderate to large-sized medical groups. CX1150 at 5-6.

3. A medical group, sometimes called an "integrated medical group," is a single practice, of which each physician is an owner or employee. The group has a single bottom line, single information systems and single staff. CX1150 at 6.

4. An IPA is an organization created for the specific purpose of contracting with health plans. CX1150 at 6

5. Physicians in multiple independent medical groups contract with an IPA to provide services to health plan patients for whom the IPA has gained a contract. CX1150 at 6.

6. IPA physicians do not share a single bottom line or single staff, and typically do not share a single information system. CX1150 at 6

7. In a few areas of the U.S., notably California, HMOs contract primarily with physician organizations. But given the paucity of such organizations (and given the preference of some HMOs for contracting with individual physicians), HMOs in most areas contract primarily with individual physicians as well as with the occasional physician organization. CX1150 at 6.

8. HMOs may contract with physicians or physician organizations on a risk or a non-risk basis. In traditional risk contracting, the HMO requires that all patients choose a primary care physician "gatekeeper" or coordinator of care. CX1150 at 6.

9. The HMO pays the primary care physician or physician organization via a capitation fee – a monthly fee paid for each of the HMO's patients who is enrolled with the primary care physician or with one of the primary care physicians in a physician organization.

CX1150 at 6.

10. The HMO may also put the individual primary care physician or, much more commonly, the medical group or IPA, at risk to some extent for the costs of specialist physician care, diagnostic testing, hospital care and occasionally for other costs (e.g. pharmaceutical costs). There are many ways to do this, but the basis of all such methods is that physicians gain extra income if costs are held below a certain level. In some contracts physicians are liable for reimbursing the HMO (directly or through a reduction in future fees) for a portion of costs if they exceed a certain level. CX1150 at 6.

11. For many reasons, individual physicians are not well-suited to bear risk beyond that of being paid via capitation for their own services, so usually (though not always), risk contracts that put physicians at risk for other services are made only with IPAs and with relatively large medical groups (e.g. more than 20 physicians, and usually larger than this). CX1150 at 6-7

12. In some cases, HMOs that contract with medical groups and IPAs on a risk basis delegate certain managed care functions to the physician organization rather than performing them themselves. CX1150 at 7.

13. These may include utilization management, quality improvement, credentialing of physicians, and even payment of claims from hospitals, physicians, laboratories, and other providers of medical services. CX1150 at 67.

14. During the 1990s in California and a few other areas of the U.S., large medical groups and IPAs actively sought HMO contracts that gave them a great deal of financial risk (and thus possible profit if they could control costs) and gave them delegation for the functions listed

above. CX1150 at 7.

15. At first, it proved relatively easy for competent physician organizations to reduce the costs of care (primarily through reducing the number of hospital days used by patients). By doing so, they generated substantial profits for themselves and for HMOs, and they could claim that they were keeping responsibility for decisions about the care of patients in physicians' hands.

16. By the mid-1990s many experts thought that this "capitated/delegated" model would rapidly become the prevalent model in the U.S. CX1150 at 7.

17. However, once the comparatively easy reductions in hospital utilization had been made (such as not hospitalizing patients with low back pain), it proved much more difficult to make further reductions. CX1150 at 7.

18. Many physician organizations were formed that were not capable of managing care, and these led to financial and public relations disasters for both the physicians and the HMOs. CX1150 at 7-8.

19. Patients and physicians, especially specialist physicians, strongly disliked gate-keeping and the stringent forms of utilization management being used by many HMOs and by delegated physician organizations. CX1150 at 8.

20. During the late 1990s, the managed care backlash and the problems encountered with risk contracting led to a rapid retreat, in much though not all of the U.S., from risk contracting, as HMOs began to pay physicians simply on a discounted fee-for service basis. It also led to the rapid growth of Preferred Provider Organizations (PPOs). CX1150 at 8.

21. PPO health plans contract (usually with individual physicians rather than groups) on a discounted fee-for-service basis and do not pass financial risk to physicians. CX1150 at 8.

22. PPOs do not use gatekeeper primary care physicians. They perform relatively little utilization management or quality improvement (though recently some PPOs have begun to increase their efforts in these areas), and do not delegate these or other functions to physicians or physician organizations. CX1150 at 8.

23. HMO's and "risk contracting" are not inextricably linked; most HMO contracting in the U.S. is now not risk-based. CX1150 at 8.

24. The decline of risk contracting and the rise of PPOs and non-risk contracting HMOs are a threat to the existence of IPAs, though not of medical groups. CX1150 at 8.

25. Since the physicians in IPAs are in independent practices, they are not financially integrated unless they are sharing financial risk through a risk contract.

26. Unless IPAs are clinically integrated to the extent that they actually increase the efficiency and/or effectiveness of the delivery of physician services, they offer little if any value to health plans under non-risk contracts. CX1150 at 8-9.

27. Health plans' focus has been on controlling costs, both through utilization management and through negotiating lower fees for physicians. CX1150 at 9.

28. Physicians have formed medical groups and IPAs to gain some countervailing negotiating power against health plans and also to develop organized processes to control costs and, by doing so, providing value to, and making themselves attractive to, health plans. CX1150 at 9.

29. Since physician organizations engaged in risk contracting were/are rewarded for controlling costs, it is not surprising that this is where they focused their efforts, rather than on developing processes explicitly aimed at improving quality. CX1150 at 9.

30. Physicians respond to financial incentives. CX1150 at 9.

31. During the past few years, observers (as well as physician organization leaders) have increasingly argued that physician organizations traditionally have lacked a "business case for quality." CX1150 at 9.

III. NTSP is an IPA that Collectively Negotiates Contracts on Behalf of its Members

32. NTSP is a non-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business at 1701 River Run Road, Suite 210, Dallas, Texas 76107. NTSP has approximately [redacted] participating physicians, of which about [redacted] are primary care physicians and the remainder are specialists. Proposed CX0249 at NTSP 000004-08; CX0259 at NTSP 000088-89; CX0311 and CX0370 at NTSP 000025-69; CX1196 at 12 (Van Wagner depo).

33. The primary purpose and activity of NTSP is to engage in collective fee negotiation on behalf of its [redacted] member physicians and enter into contracts with health plans. CX1196 at 11, 12, 15-16 (Van Wagner depo); CX1182 at 10-11 (Johnson depo); CX0311 at NTSP 000029, 32-34, 38-39; CX0275, CX0370 at NTSP000064.

34. NTSP's members have distinct economic interests, and its members have separate clinical practices. CX1151 at 4-5; CX1182 at 21 (Johnson depo).

35. NTSP is comprised of physicians and physician practices that are otherwise in competition. CX1151 4-5; CX1182 at 21 (Johnson depo)

36. NTSP is a physician controlled organization whose board members, under the terms of NTSP's bylaws, must at all times be physicians. CX0275 at NTSP 000009, 15-16.

A. Almost all of NTSP's negotiations involve non-risk, fee-for-service contracts

37. NTSP originally focused on negotiating risk contracts for managed care plans, but as the market moved away from such plans, NTSP increasingly negotiated fee-for-service (FFS) contracts. CX1198 at 9-10 (Vance depo); CX1176 at 170 (Frech depo); CX0195 at NSTP045645 - 045665 (Medical Executive Minutes of April 28, 2001).

38. NTSP has many contracts for physician services; [redacted] are risk contracts, for which at least some of the physicians as a collective assume risk through NTSP, but [redacted] are non-risk fee-for-service contracts. FTC-NTSP-[redacted] 000085; CX1197 at 182, 228 - 29 (Van Wagner depo); CX1151 at 15.

39. Currently NTSP has [redacted] risk-sharing contracts—with [redacted] and [redacted], covering fewer than [redacted]. CX0616 at FTC-NTSP-[redacted] 000085; CX1197 at 182, 228 - 29 (Van Wagner depo); CX1151 at 15.

40. In contrast, NTSP has some [redacted] fee-for-service contracts covering [redacted] lives. CX0616 at FTC-NTSP-[redacted] 000085; CX1197 at 182, 228 - 29 (Van Wagner depo); CX1151 at 15.

41. An NTSP chart of 7 health plans (including both HMO and PPO products from [redacted]) with which NTSP had contracts with [redacted] estimated total covered lives under these plans at [redacted]. CX0200 at NTSP 002871; CX1177 at 113 (Grant depo).

42. Only [redacted] of NTSP's physicians are eligible to participate in any NTSP risk-sharing arrangement. CX0616 at FTC-NTSP-[redacted] 000085-95; CX1197 at 182, 228 - 29

(Van Wagner depo).

43. For example, NTSP entered into an affiliation agreement with [redacted], an IPA, which allows [redacted] over [redacted] physicians to access or "ride" NTSP's non-risk contracts without participating in any risk contracts themselves. CX0305 at NTSP 020829-50; CX1194 at 8, 18, 30-31 (Van Wagner depo); CX0259; CX0267.

44. After [redacted] determined that it was no longer in its best interest to engage in risk contracting, it acknowledged that its affiliation with NTSP [redacted] and noted the importance of a "unified voice" for physicians. Proposed CX0201 at NTSP 023613.

45. All or substantially all of NTSP's participating physicians participate in NTSP's negotiated non-risk contracts. CX1196 at 228 (Van Wagner depo); CX0616 at [redacted]000088-95.

B. NTSP's members include large numbers of physicians in the Fort Worth Area of Tarrant County

46. NTSP physicians make up a large percentage of Tarrant County practitioners in many medical specialties, including [redacted] Totaling over all the specialties and primary care, [redacted] of all Tarrant County physicians belong to NTSP. CX1151 at 7.

47. In the Fort Worth area, [redacted] is an important hospital to have in a health plan's network. In a recent survey [redacted] was selected as Fort

Worth's "most preferred hospital" for overall quality and image. CX1151 at 8.

48. NTSP physicians are responsible for up to [redacted] percent of expenditures at Harris [redacted] for some specialties. The overall expenditure percentage by NTSP specialists reported for [redacted] is [redacted] percent. CX1151 at 8.

49. Another key hospital in Ft. Worth is [redacted]. CX1151 at 8.

50. At [redacted] hospital in Ft. Worth, NTSP physicians in some specialties account for 100 percent of expenditures, and the overall expenditure share is [redacted] percent. CX1151 at 8.

51. NTSP membership was linked to the ability to serve the Ft. Worth area. CX0268 at NTSP 021633; CX0269 at NTSP 021658; NTSP 021640. CX1153 at 4.

52. Doctors who were located outside or left the Forth Worth area by, for example, relocating to Dallas, were rejected from or withdrew from NTSP. CX0268 at NTSP 021633; CX0269 at NTSP 021658. CX1153 at 4.

53. NTSP Board Member, Jack McCallum testified that [redacted] CX1187 at 59 (McCallum depo).

54. In an email, NTSP Executive Director, Karen Van Wagner identified [redacted]. CX1106 at NTSP 059703.

55. To be competitively marketable to serve Fort Worth area employers, health plans must include must include in its physicians who practice in the Fort Worth area. CX1188 at 53 (Mosley depo).

C. NTSP's Contractual and Informal Relationships with its Members Purposefully and Effectively Strengthened its Negotiating Position with Health Plans for Non-Risk Contracts

56. NTSP Physician Participation Agreements include: [redacted] CX0276 at NTSP 022453.

57. NTSP members agree that they will refrain from pursuing offers from a health plan until NTSP notifies the physicians that it is permanently discontinuing negotiations with the health plan. CX0311 at NTSP 000034.

58. NTSP's physician participation contracts have led physicians to believe that NTSP is exclusive. CX0296 at NTSP 019930; Proposed CX0225; Proposed CX0226; Proposed CX0227.

59. NTSP has a duty under its Physician Participation Agreement to [redacted] CX0275 at NTSP 000009, 000033.

60. NTSP's Executive Director testified that, [redacted]. CX1196 at 68:25-69:04 (Van Wagner Depo).

61. NTSP, its Board of Directors, and its member physicians have recognized that they can collectively increase their bargaining power by avoiding signing direct contracts individually with payors or otherwise coordinating their individual contracting behavior.

CX0256; CX0288; CX0343; CX0355; CX0267; CX0400; CX0902; CX0259 at NTSP000088; CX0275 at NTSP000009- 24; CX0195 at NTSP 045645-65.

62. NTSP leaders have also recognized NTSP's ability to obtain higher reimbursement rates for its members. CX0310; CX0209; CX0351 at SWN 01010; CX0518.

63. NTSP collectively negotiates for the best rates possible for its member. CX1177 at 46 (Grant depo); CX1180 at 10-11 (Johnson depo); Proposed CX0205; CX0256 at FTC-NTSP-[redacted] 009052; CX0351 at SWN 001010; CX0295 at NTSP 022341-42; CX1061 at NTSP 004919-21; CX0051 at NTSP 005435; CX0704 at NTSP 005225; Proposed CX0092; CX0526 at NTSP022458 - 62; CX0252.

64. NTSP periodically requests that its members abstain from negotiating contracts directly with payors and to refer any payor contacts to NTSP staff in accordance with their participation agreements. CX1197 at 198:10-19 (Van Wagner depo); CX0942 at NTSP005140 - 005141; CX0811 at NTSP014929-35 ([redacted]); CX0500.

65. NTSP has at various times solicited and obtained signed powers-of-attorney from its members, giving NTSP the right to negotiate non-risk contracts on behalf of those members. CX1173 at 56-57 (Deas depo); CX1065 at SWN 001809-11; CX1061 at NTSP 004919-21; CX01070.

66. The NTSP members that signed powers-of-attorney and the membership at large were informed of the number of NTSP members who had signed powers-of-attorney during NTSP's negotiations with health plans of non-risk contracts. CX1066 at NTSP014926 - 014928; CX0548 at NTSP 005104.

67. Individual NTSP physicians have referred health plans that were attempting to

contract with them directly back to NTSP, and in doing so have referenced an agency or power of attorney agreement with NTSP. CX0760.

68. NTSP exercised the powers of attorneys it has solicited from members to terminate its members' participation in a health plan. CX0546.

69. On at least three occasions, NTSP's coordinated actions and threats of departicipation have caused health plans to increase their offers or reimbursement. CX0256 at FTC-NTSP-CONCARD 009052-54 ([redacted]); CX0583 at JJ 001332; CX786 at [redacted]000886; CX0583.

70. Through NTSP's Participating Physician agreement, collection of powers of attorney or other instruments naming it as negotiating agent for particular contracts, and collective withdrawal from a health plan, NTSP effectively became the exclusive agent for otherwise competing practices for a period of time, thereby imposing a moratorium on independent competition. CX1151 at 12-13.

D. NTSP employed the use of polls to arrive at a consensus price with its members prior to and during negotiations with health plans for non-risk contracts.

71. NTSP polled its participating physicians, asking each to disclose the minimum fee, typically stated in terms of a percentage of RBRVS, that he or she would accept in return for the provision of medical services pursuant to an NTSP-payor fee-for- service HMO or PPO agreement. CX1204 at RES2-0001 - 0004; CX1196 at 26-29, 43-44, 62 (Van Wagner depo); CX1194 at 78-80 (Van Wagner depo); CX0274.

72. NTSP's polls were conducted by presenting its members with a ballot which listed various reimbursement rate ranges as a percentage of RBRVS. The member would then be required to indicate his or her preferred rate range by placing a check next to his or her selection. CX0274; CX0565; CX0633.

73. Medicare's Resource Based Relative Value System ("RBRVS") is a system used by the United States Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. The RBRVS approach provides a method to determine fees for specific services. CX1204 at RES2-0001 - 0004.

74. The dissemination of the poll results informs NTSP's members what prices their competitors, on average, will charge in the upcoming year. CX1196 at 43, 62 (Van Wagner depo); CX1194 at 87-88 (Van Wagner depo); CX0393.

75. NTSP prefaced the poll by stating: [redacted] CX0387 at NTSP 004948; CX0633 at NTSP 003960.

76. The poll included a ballot for HMO and PPO products, as well as a separate ballot for Anesthesia. CX0387 at NTSP 004948; CX0633 at NTSP 003960.

77. NTSP's Executive Director testified that [redacted] CX1196 at 77:01-14 (Van Wagner depo).

78. NTSP calculates the mean, median, and mode ("averages") of minimum

acceptable fees reported by its physicians. NTSP then reports these measures back to its participating physicians, confirming to the participating physicians that these averages will constitute the minimum fees that NTSP will entertain as the basis of any contract with a payor. CX0103; CX1196 at 26-29, 43-44, 62 (Van Wagner depo); CX1194 at 78-80 (Van Wagner depo); CX1204 at RES2-0001 - 0004.

79. Upon receiving on offer from a health plan below the established minimums, NTSP informs the health plan that its physicians have established minimums fees for NTSP-payor agreements, identifies the fee minimums, and states that NTSP will not enter into or otherwise forward to its participating physicians any payor offer that does not satisfy those fee minimums. CX1204 at RES2-0001 - 0004; CX1196 at 62-63, 153-154 (Van Wagner depo); CX1173 at 26-29 (Deas depo).

80. After NTSP's Board or staff has rejected and refused to messenger a health plan offer, health plans have submitted new proposals with higher fees, until NTSP agrees to messenger the offer. At times NTSP has proposed counter-offers. CX1191 at 43, 53-54, 64-65 (Quirk depo); CX1098 at NTSP 014840-45; CX1012 at NTSP 022331; CX0627 at FTC-NTSP-[redacted]000064-65; CX0565 at NTSP 005086; CX0580 at FTC-NTSP-[redacted]00296; CX0582 at NTSP 071579; CX0585 at FTC-NTSP-[redacted]00080-81; CX0591 at NTSP 071467; CXC0104 at NTSP 004170; CX0789 at FTC-NTSP-[redacted] 000461-62; CX0799 at FTC-NTSP-CIGNA000491-92; CX0790 at FTC-NTSP[redacted]000881.

81. During negotiations with specific payors NTSP has sent fax alerts to its members and held "General Membership Meetings" to provide contracting updates for specific payor negotiations and report poll results. CX1178 at 21-23 (Hollander depo); CX173 - CX0189;

CX0186 at NTSP014430; CX0615 at NTSP014491; CX0945 at NTSP 005120-23; CX0903 at NTSP022383-34; CX0617 at NTSP 014913-14; CX0103 at NTSP 004638; CX0628 at NTSP 014846; CX0365 at NTSP 014430.

82. NTSP's members also provide NTSP with the price terms of direct offers from health plans. CX1177 at 113 (Grant depo).

83. NTSP feeds back to its physician practices information about the polled responses and the established minimum contract price, and about the status of ongoing negotiations. This creates an incentive for individual physician practices to defer direct negotiation with any health plan while the possibility remains of an NTSP contract with that health plan at the consensus rate. CX1151 at 12; CX0500, CX0310, CX0704; CX0267, CX0704, CX0186.

84. The setting of a collectively determined minimum, in and of itself, is likely to raise prices. CX1151 at 11.

85. Individual practices that were or would have been willing to accept a price lower than the minimum will accept a higher price. CX1151 at 11.

86. Because participation in non-risk contracts is not mandatory, those practices that require a higher price are free not to participate. Accordingly, the price floor pushes up the prices of those at the lower end of the distribution, while not reducing the prices at the high end. The result will almost always be higher prices. CX1151 at 11.

87. Contract data provided by several health plans covering consumers in Tarrant County affirms that the NTSP collectively-negotiated price is higher than the price that many of its physician practices have agreed upon in direct negotiation. CX1151 at 13-14.

88. NTSP's behavior has raised prices for employers and consumers in the Fort Worth

area of Tarrant County. CX1151 at 5.

89. Economic analysis indicates that such price increases likely will, in time, result in increased costs to patients in the form of higher premiums, co-payments and deductibles, or reduced coverage. CX1151 at 14.

E. Timeline of NTSP's Establishment of Collective Minimum Rates for Non-Risk Contracts.

90. In late August of 1999, at a Board Retreat, NTSP included among its [redacted] the maintenance of [redacted] for its members. Among the threats identified by the Board was [redacted] CX0159 at NTSP 046869.

91. At the retreat, Tom Deas, stated that [redacted] CX0310 at NTSP 033753.

92. The presentation acknowledged that NTSP had [redacted] its members' ability to negotiate with health plans. Dr. Deas credited NTSP's then-recent entrance into an agreement with another IPA, HTPN, which provided NTSP members with [redacted] CX0310 at NTSP 033753.

93. NTSP's Board had noted the fee advantages of the IPA alliance with [redacted] in dealing with [redacted] including [redacted] CX0018 at NTSP 019748-53.

94. Karen Van Wagner testified that [redacted]

[redacted]

86:05;87:07 (Van Wagner depo); CX1195 at 66:07-67:25 (Van Wagner depo).

95. The results of these polls were also applied generally to other future health plan offers in 2000. CX1195 at 66:07-67:21 (Van Wagner depo).

96. NTSP's first stated "Annual Poll" was in 2001. CX1195 at 66:07-67:21 (Van Wagner depo).

97. On January 18, 2000, NTSP conducted a poll to determine minimum fees for [redacted] Medicare and Commercial HMO products. NTSP did not include a ballot to determine a minimum PPO rate. CX0912; CX0327 at NTSP 014727.

98. NTSP claimed to represent its members pursuant to an agency letter. CX0912; CX0327 at NTSP014727.

99. Between January and November 29, 2000, NTSP's member physicians "conveyed" to NTSP that [redacted] PPO offer of [redacted] Medicare met an acceptable minimum standard. CX0565 at NTSP 005086.

100. NTSP scheduled three General Membership Meetings listing [redacted] on the agenda between August 2, 2000 and November 21, 2000. CX0178; CX0179l; CX0180.

101. On November 29, 2000, NTSP sent a fax to its members and "repolled" its membership on [redacted]. The fax disclosed [redacted] CX0565 at NTSP 005086-88.

102. On April 16, 2001, [redacted] asked [redacted]

[redacted]

CX0085.

103. The NTSP Board instructed her to [redacted]

[redacted]

CX0085.

104. On April 28, 2001, NTSP called a "Special Called Medical Management Committee Meeting" of [redacted] physician members. The committee met to discuss [redacted]

[redacted]

[redacted]

[redacted]

[redacted] CX0195 at NTSP 045645-65.

105. NTSP wished to avoid having its members experience a fee-for-service [redacted] CX0195 at NTSP 045645-65.

106. NTSP acknowledged that its [redacted]

[redacted]

[redacted]

[redacted]

[redacted] CX0195 at NTSP 045645-65.

107. NTSP proposed two initiatives: [redacted]

[redacted]

CX0195 at NTSP 045645-65.

108. According to the meeting agenda, this discussion was preceded [redacted]

[redacted]

[redacted]

[redacted]. CX0195 at NTSP 045645-65.

109. The questions asked [redacted]

[redacted]

CX0195 at NTSP 045645-65.

110. In response to the question, [redacted]

[redacted]

CX0195 at NTSP 045645-65.

111. On July 13, 2001, NTSP encouraged its members to represent to [redacted]

[redacted] that NTSP's annual poll-derived "Board minimums" had remained constant from [redacted] CX1042.

112. On September 14, 2001, NTSP conducted an [redacted] CX0617 at NTSP 014913-14.

113. On October 15, 2001, the NTSP Board [redacted] CX0103 at NTSP 004638; CX0389 at NTSP 004686.

114. A fee comparison table compiled by NTSP in 2001 demonstrated that [redacted] CX0200 at NTSP 002871-77; CX1177 at 113 (Grant depo); CX0103 at NTSP 004638; CX0389 at NTSP 004686.

115. On October 29, 2001, NTSP's Board and Karen Van Wagner, via fax and at a General Membership Meeting, [redacted]. CX0186 at NTSP 014430; CX0628 at NTSP 014846.

116. On November 6, 2001, NTSP conducted an [redacted] CX0137.

117. On November 11, 2002, NTSP conducted an [redacted]. CX0430 at NTSP 022082-86.

F. NTSP and its members engaged in interstate commerce

118. NTSP and its members' activities, including negotiations, affect payors' dealings with employers active in interstate commerce. Proposed CX1063.

119. NTSP members accept payments from the federal government through the Medicare and Medicaid programs. CX1177 at 116-117 (Grant depo); CX1178 at 163 (Hollander depo); CX1187 at 165-166 (McCallum depo); CX1199 at 298 (Vance depo).

120. NTSP members provide medical services to patients from outside the state of Texas. CX1187 at 167-168 (McCallum depo); CX1199 at 297 (Vance depo).

121. NTSP and it members make [redacted] purchases from vendors located outside the state of Texas. CX1195 at 77 (Van Wagner depo); CX1187 at 162-166 (McCallum depo; CX1177 at 115-116 (Grant depo); CX1199 at 299-301 (Vance depo); Proposed CX0094.

122. NTSP used a payor-specific poll regarding [redacted]

CX0319 at NTSP012599; CX0321 at NTSP005285-56.

IV. [redacted] Fee-For-Service Negotiations With NTSP

The factual evidence of NTSP's dealing with [redacted] indicates that NTSP's collectively-negotiated price led to higher prices. In 2001 [redacted] was engaged in contract negotiations with NTSP. At that [redacted] it had more than 100 NTSP physicians under contract through NTSP's affiliation with another IPA. NTSP calculated the prices in force at the time as the equivalent of [redacted] Tarrant County RBRVS for the HMO and [redacted] PPO. After NTSP caused the withdrawal of those physicians from the [redacted] network, [redacted] contracted with the NTSP network at 125 percent of 2001 Tarrant County RBRVS for HMO services and [redacted] percent for the PPO. CX1043 at NTSP 004898-901, CX1097 at 004228-33; CX1151 at 14.

A. NTSP sought to collectively negotiate fees with [redacted]

123. In July 14, 1998, NTSP sent [redacted], informing its members that [redacted]

was attempting to standardize it physician agreements by, among other things, changing the fee schedule. CX1005 at NTSP022423 - 022424.

124. NTSP included an agency agreement in [redacted], and explained to its members that [redacted]

125. NTSP recommended to its members that they [redacted]

126. A July 15, 1998 letter of [redacted] of [redacted] to [redacted] is sent whereby [redacted] agreed to allow NTSP to serve as its agent in regard to future negotiations with [redacted] CX1006 at [redacted] 4081.

127. The letter from [redacted] further instructed NTSP that it would not be willing to agree to any fee schedules lower than [redacted] Medicare for [redacted] HMO product and [redacted] for [redacted] PPO product. CX1006 at [redacted] 4081.

128. NTSP requested and [redacted] granted an extension on the time line for the assignment of contracts as requested by NTSP. CX1008 at [redacted] 00249-250.

129. NTSP informed its members of the extension and told its members that they did not need to sign or return any documents/contracts to [redacted]. CX1008 at [redacted] 00249-250.

130. In September of 1998, NTSP proposed to [redacted] that [redacted] RBRVS would be used in calculating the rates for its HMO and PPO products for NTSP physicians. CX1010 at NTSP022383-384 ([redacted]).

131. NTSP also informed its members in [redacted], that [redacted]

[redacted] CX 1010 at NTSP 022383-384.

132. On October 27, 1998, NTSP informed its members that [redacted] CX1011 at NTSP 022358-359 ([redacted]).

133. On December 2, 1998, NTSP updated its members on [redacted] [redacted] CX1012 at NTSP 022331.

134. NTSP also informed its members that [redacted] CX1012 at NTSP022331.

135. On March 9, 1999, NTSP recommended to its members to [redacted] CX1014 at [redacted]-00339 - 00340.

136. In June of 1999, NTSP reported to its members [redacted] CX 1015 at [redacted]00393 - 00396 ([redacted]).

137. [redacted] fee schedule for the HMO, POS and PPO products was [redacted] based on [redacted] RBRVS. CX 1015 at [redacted]-00393 - 00396.

B. NTSP declined [redacted] offer

138. On March 14, 2001, [redacted], wrote to [redacted] indicating NTSP's [redacted] CX1117 at [redacted]000001-3.

139. On April 12, 2001, NTSP reports, at its Primary Care Counsel Meeting, that [redacted] CX0209 at NTSP015220 - 015223.

140. In an e-mail chain dated, April 16 of 2001 [redacted] of [redacted] a primary care physician group, forwarded to NTSP an e-mail of October 31, 2000, he had written to [redacted]. CX1016 at NTSP 070867 - 070868.

141. [redacted] indicated in the email [redacted] CX 1016 at NTSP 070867-868

142. [redacted] forwarded the [redacted] e-mail to [redacted]. CX1016 at NTSP 070867-868.

143. From late in 2000 to February or March of 2001, the [redacted] was soliciting bids from health plans for a contract to provide health care service [redacted] CX1188 at 19 (Mosley depo), CX1191 at 49-50 (Quirk depo).

144. In May of 2001, [redacted] reported to the NTSP Board that [redacted] CX0087 at NTSP004311.

145. At the same meeting, [redacted] was informed that the fee schedule offered was not acceptable to NTSP. CX0087 at NTSP004311.

146. In late May, [redacted] of NTSP emailed [redacted] informing her that [redacted] CX1018 at LC003354, CX1027 at LC003171, CX1021 at LC003289.

147. [redacted] responded to the email instructing [redacted] that [redacted] CX1018 at LC003354 and LC003171, CX1021 at LC003289; CX1022 at NTSP069410 - 069412.

148. [redacted] instructed [redacted] to send [redacted] ranges and market averages and not specific listings. CX1018 at LC003354 and LC003171, CX1021 at LC003289; CX1022 at NTSP 069410 - 069412.

149. [redacted] replied to [redacted] informing him that in [redacted] CX1024 at LC003216-17; CX1023 at NTSP069302 - 069303.

150. [redacted] further stated that [redacted] CX1023 at NTSP069302.

151. [redacted] also stated in his reply to [redacted] that there were no health plans paying the same rate for both HMO and PPO plans. CX1024 at LC003216-17; CX1023 at NTSP 069302-303.

152. On June 19, 2001, [redacted] wrote [redacted] explaining [redacted]

[redacted]. CX1024 at LC 003216-17; CX1023 at NTSP069302 - 069303.

153. On June 25, 2001, the NTSP Board decided to inform [redacted] of its decision to reject its offer. CX0089 at NTSP003674 - 003678.

154. The Board was informed that [redacted] was negotiating with [redacted] to provide health insurance to its employees. CX0089 at NTSP003674 - 003678.

C. NTSP applied collective pressure to try to obtain higher rates

155. NTSP encouraged its Board members to contact [redacted] CX0089 at NTSP003674 - 003678.

156. On July 2, 2001, NTSP members and board members, [redacted], and [redacted] sign a letter addressed to the [redacted] bearing NTSP's letterhead. CX1029 at [redacted]006531 - 006532.

157. The July 2, 2001 letter states that [redacted] The letter also states that "[redacted] CX1029 at OA006531 - 006532.

158. On July 9, 2001, [redacted] signs a letter addressed to the [redacted] stating that the [redacted] The letter refers to the [redacted]

CX1031 at NTSP003270.

159. On July 10, NTSP informed its PCP Council that [redacted] CX0211 at NTSP003426-29.

160. NTSP again stated that [redacted]. CX0211 at NTSP 003426 - 003429.

161. NTSP stated that [redacted]. CX0211 at NTSP003426 - 003429; CX1042 at NTSP014962.

162. NTSP members provided healthcare to the majority of employees of [redacted] and their dependents. CX1042 at NTSP014962 - 014965.

163. NTSP encourages its members to contact the [redacted] to educate them about the situation with [redacted] and ask for help. CX0211 at NTSP003426 - 003429.

164. On July 10, [redacted] reported to [redacted] of a telephone conversation he had just had with [redacted]. In that conversation [redacted] informed him that [redacted] CX1034 at -006546.

165. [redacted] told [redacted] that [redacted] CX1034 at [redacted]-006546.

166. [redacted] indicated to [redacted] that NTSP met with the [redacted]

[redacted]. CX1034 at [redacted]-006546.

167. On July 11, 2001, NTSP held a General Membership Meeting concerning [redacted]. CX0179 at NTSP014307. Proposed CX0094.

168. On July 13, 2001, the NTSP Board sent [redacted] informing its membership that [redacted]." CX1042 at NTSP014962 - 014965.

169. The NTSP Board also noted in [redacted] that [redacted] CX1042 at NTSP014962 - 014965.

170. The NTSP Board stated [redacted] CX1042 at NTSP014962 - 014965.

171. The NTSP Board then advised its member physicians that [redacted] CX1042 at NTSP014962 - 014965.

172. The NTSP Board further informed its members, in [redacted], that [redacted]

[redacted] CX1042 at NTSP014962 - 014965.

173. The NTSP Board stated that [redacted] CX1042 at NTSP014962 - 014965.

174. The NTSP Board recommended that [redacted] CX1042 at NTSP014962 - 014965.

175. The NTSP Board attached [redacted] CX1042 at NTSP014962 - 014965.

176. The Board wrote that [redacted] CX1042 at NTSP014962 - 014965.

177. The NTSP Board [redacted] CX1042 at NTSP014962 - 014965.

178. The NTSP Board also attached [redacted] CX1042.

179. [redacted]

[redacted] CX1042.

180. [redacted]

[redacted] CX1042.

181. "[redacted]

[redacted] CX1042.

182. [redacted]

[redacted] CX1042.

183. [redacted]

[redacted] CX1042.

184. [redacted] CX1042.

185. [redacted] CX1042.

186. [redacted] CX1042.

187. [redacted]

[redacted] CX1042.

188. NTSP members wrote letters to [redacted]

[redacted] CX1051; CX1036 at NTSP003271 - 003274; CX1046 at FTC-NTSP-[redacted]-007116 - 007117; CX1039 at [redacted]006534 - 006544.

189. NTSP obtained a copy of a July 13, 2001 email from [redacted] to [redacted] CX1045 at NTSP003412.

190. In the July 13, 2001 email, [redacted] writes that [redacted]

[redacted]

CX1045.

191. The email includes the statement by [redacted] that [redacted] CX1045 at NTSP 003412. Proposed CX1085.

192. At the July 20, 2001 Medical Executive Committee Meeting, NTSP decided to [redacted] CX0188 at NTSP 003622.

D. NTSP terminated its members participation in the [redacted] contract

193. On July 23, 2001, the NTSP Board [redacted]. CX0091 at NTSP 003299-303.

194. On July 23, 2001, [redacted] sent a letter to [redacted]. CX1118 at FTC-NTSP-[redacted] 000006-10; CX1201 at 122-25, 127 and 129 (Youngblood depo).

195. [redacted] carbon-copied the letter to [redacted] as well as the [redacted]. CX1118 at FTC-NTSP-[redacted] 000006-10.

196. On the evening of July 23, 2001, NTSP held a General Membership Meeting where [redacted] was discussed. Further, [redacted] CX0184 at NTSP 014306.

197. NTSP sent a letter dated July 23, 2001, to [redacted] stating that [redacted] CX1053.

198. On July 26, 2001, [redacted] records in an internal [redacted] email [redacted] [redacted]. CX1056 at [redacted]-006638.

199. He suggests that [redacted]. CX1056 at [redacted]-006638.

200. On July 30, 2001, [redacted] reported to the NTSP Board that the [redacted]. CX0093 NTSP003544 - 003548.

201. At the same July 30, 2001 Board meeting, [redacted] relayed to the Board [redacted] CX0093 NTSP003544 - 003548.

202. On July 30, 2001, [redacted] informs [redacted] that [redacted]. CX1057 at [redacted]-006650; CX1191 at 104 (Quirk depo).

203. On August 9, 2001, via [redacted], NTSP informed its members [redacted]. CX1062 at NTSP 014941-43.

E. NTSP seeks powers-of-attorney to negotiate exclusively with [redacted]

204. NTSP solicited powers of attorney for NTSP to represent its members in all negotiations and contracting with [redacted] CX1062 at NTSP 014941-43.

205. The powers of attorney were [redacted]

[redacted] CX1062 at NTSP 014941-43.

206. [redacted] also stated, [redacted] CX1062 at NTSP 014941-43.

207. NTSP explained to its members that [redacted] CX1062 at NTSP014941 - 014943.

208. On August 13, 2001, the NTSP Board reviewed [redacted] to which the power of attorney was attached and decided to [redacted] CX0096 at NTSP001490 - 001494.

209. On August 24, 2001, NTSP informed its member physicians that [redacted] CX1066 at NTSP014926 - 014928 ([redacted]).

210. NTSP repeated its unfavorable assessment of the [redacted] CX1066 at NTSP014926 - 014928.

211. NTSP informed its members that it had already received [redacted] executed powers of attorney from member physicians. [redacted], CX1066 at NTSP014926 - 014928.

212. NTSP recorded on spreadsheets the names of the [redacted] physicians that signed the powers of attorney. Proposed CX0499. CX1002 at NTSP004426 - 004438.

213. NTSP advised those member physicians who signed an NTSP Power of Attorney for contracting with [redacted] to tell [redacted] that "[redacted], CX1066 at NTSP014926 - 014928

214. NTSP sought the submission of executed powers by additional members. [redacted], CX1066 at NTSP014926 - 014928.

215. NTSP also informed it members that NTSP[redacted] CX1066 at NTSP014926 - 014928.

216. In August of 2001, [redacted] contacted all of the affected [redacted] physicians who were terminated by NTSP for the [redacted] products. CX1191 at 119-120 (Quirk depo).

217. [redacted] wrote to physicians [redacted] physicians accepted that offer. CX1191 at 119-120, 124-125 (Quirk depo).

218. In some instances, physicians who declined participation at those rates were subsequently offered a [redacted] RBRVS for HMO and [redacted] for PPO either directly or through [redacted] another IPA . Proposed CX0658; CX1053 at OA006454.

219. On August 28, 2001, [redacted], wrote to [redacted] informing them that [redacted] Specifically, [redacted] was concerned with the use of power of attorneys to allow

NTSP to negotiate [redacted] with [redacted] and with NTSP's withdrawal of member physicians from participating in a contract between [redacted] and [redacted] CX1067 at NTSP004424 - 004425.

F. NTSP collectively tries to renegotiate a contract with [redacted]

220. In a Board of Directors meeting of August 30, 2001, the Board decided to invite [redacted] to discuss [redacted] as previously expressed in [redacted]. CX0097 at NTSP004377 - 004383.

221. On September 5, 2001, [redacted] wrote to [redacted] responding to [redacted] and inviting [redacted] to attend a Board meeting to discuss those issues. CX1070 at NTSP004282.

222. On September 5, 2001, NTSP held a General Membership Meeting concerning [redacted]. CX1076.

223. [redacted] updated NTSP's membership on recent progress in contract negotiations with [redacted]. CX0158 at NTSP014472.

224. On September 13, 2001, [redacted], via fax, reported to NTSP's membership that [redacted] CX1076 [redacted]).

225. [redacted] stated that as a result of that development, [redacted] CX1076 at NTSP 014917.

226. At that time [redacted] was still attempting to contract NTSP's terminated physicians on an individual basis. Proposed CX0658.

227. On September 7, 2001, [redacted] responded to [redacted] by letter and declined NTSP's offer to attend a Board meeting based on [redacted] view that NTSP had not yet submitted an adequate written response to its [redacted]. CX1121 at FTC-NTSP-[redacted]000021.

228. On September 13, 2001, [redacted] re-issued NTSP's invitation to meet with [redacted] in order to address his concerns as stated in his [redacted]. CX1072 at NTSP 004280.

229. On September 13, 2001 [redacted] wrote to [redacted] also reported that [redacted] CX1075 at NTSP002290 - 002292.

230. On September 19, 2001 NTSP informed [redacted] CX1079 at [redacted] 00840 - 00841.

231. In September 20, 2001 letter, [redacted] CX1080 at FTC-NTSP-[redacted]000066

232. On September 21, 2001, [redacted] provided an update on contract negotiations with [redacted]. "[redacted]

[redacted] CX0198 at NTSP 045481-483.

233. On September 24, [redacted] and [redacted] of [redacted] met with NTSP's Board.

234. The Board members asserted that [redacted] The Board told [redacted] and [redacted] that [redacted] CX1081 at FTC-NTSP-[redacted]000025-26.

235. During this meeting, NTSP's Board told [redacted] that [redacted] CX1081 at FTC-NTSP-[redacted]000025-26.

236. The NTSP Board told [redacted] and [redacted] that [redacted] [redacted] CX1081 at FTC-NTSP-[redacted] 000025-26

237. NTSP's Board Minutes of September 24, 2001 reported that [redacted] CX0100 at NTSP004256 - 004261.

238. Additionally, [redacted] reported on her meeting at the [redacted] office in which she shared the magnitude of the problem of lower reimbursement rates to physicians. Physicians were encouraged to write to [redacted] in that regard. CX0100 at NTSP004256 - 004261.

239. In a September 24, 2001 letter, [redacted] invited [redacted] to reopen negotiations.

CX1084 at FTC-NTSP-[redacted]000028.

240. On September 24, 2001, NTSP sent its members [redacted] The proposed terms were price related. NTSP sent [redacted] Proposed CX1064.

241. [redacted] of the proposed terms stressed that [redacted] [redacted]. Proposed CX1064.

242. [redacted] of the proposed terms is [redacted]. Proposed CX1064.

243. On October 1, 2001, the [redacted] was set to transition its employee's health plans from [redacted] to [redacted]. CX1188 at 19 (Mosley Dep.).

244. The Board discussed a sample letter from [redacted] to HMOs concerning predatory contracting practices. [redacted], CX0102 at NTSP 004694-004700. [redacted]. CX0199 at NTSP 045444-445.

245. On October, 10, 2001, [redacted] of NTSP emailed [redacted], [redacted] [redacted] Email string between [redacted] and [redacted]. CX1088 at LC003585; [redacted] CX1096 at LC004347 - 004348.

246. [redacted] replied that [redacted]

between [redacted] and [redacted] CX1088.

247. On October 29, 2001, NTSP sent [redacted] which published [redacted]

[redacted]. CX0393.

248. On October 29, 2001, NTSP held a General Membership Meeting regarding [redacted]. NTSP General Membership Meeting of October 29, 2001. CX0186 at NTSP014430.

249. NTSP and [redacted] signed a contract which became active on [redacted]. HMO at [redacted] RBRVS and [redacted] RBRVS. CX1095 at [redacted] 008256.

G. NTSP and [redacted] sign a new contract at higher reimbursement rates

250. On November 1, 2001, NTSP sent the contract to its members which it indicated [redacted] CX1098.

251. NTSP explained that [redacted]

[redacted], CX1097 at NTSP004228 - 004233.

252. On November 19, 2001, NTSP communicated the results of the negotiations to its members. As a result, the figures for the [redacted] NTSP members responding to [redacted] offer were as follows: HMO: [redacted] Accepted/[redacted] Rejected PPO: [redacted] Accepted [redacted] Rejected. [redacted], CX1100 at NTSP005037-38; NTSP Members Accepting [redacted] CX1001 at NTSP015375.

253. Former NTSP President, and then current director, [redacted],

summarized NTSP's success to his medical group in an effort to convince the group to continue their membership with NTSP wrote the following:

CX0256 at FTC-NTSP 009053 - 009054; CX1199 at 310:13-311:03 (Vance depo).

254. NTSP's clinical profile scores experienced an as of ; CX1124 at -06870 - 06892.

V. NTSP Rejected Offer As Falling Below the "Board Minimums"

255. In 2000, agreed, in its negotiations with the corporate parent of the , to offer network participation to any doctor with admitting privileges at a facility. Proposed CX0248 at FTC-NTSP 000017.

256. On February 18, 2000, NTSP Med. Executive Committee learned that CX191 at NTSP 046570.

257. On March 6, 2000, NTSP informed its members that forwarded a notice of termination to for its HMO product, , because attempted to reduce

rates (CX0703 at NTSP 014712-13.

258. As a result, , in addition to its own member physicians, terminated the participation of NTSP members. CX0703 at NTSP 014712-13.

259. NTSP emphasized to its members that they that if accessing from another source. CX0703 at NTSP 014712-13.

260. On April 5, 2000, NTSP informs its membership that attempted to contract directly with NTSP members at a rate. CX0704 at NTSP 005225.

261. NTSP stated that many of NTSP's members contacted NTSP requesting NTSP to negotiate a group contract with for the product. CX0704 at NTSP 005225.

262. NTSP informed its members that was CX0704 at NTSP 005225.

263. NTSP recommended against the participation of its members in based on its price terms as well as low number of health plan subscribers) in Tarrant County. CX0704.

264. On June 6, 2000, at a General Membership Meeting, NTSP told members that another IPA, , terminated both s HMO and PPO products based on attempts to reduce fees. and PPO ( ). CX0177 at NTSP 014533.

265. At the General Membership Meeting, NTSP also told members that if attempts to lower its PPO fees from its current Medicare, this NTSP added that such an

attempt led [redacted] to terminate the [redacted] product effective [redacted] CX0337 at NTSP 014668.

266. On June 9, 2000, NTSP also shared this information with NTSP's membership in a fax to it members. CX0337 at NTSP 014668.

267. On June 15, 2000, NTSP reported to its members that some members had called NTSP saying they are receiving, and being pressured to sign individual contracts with [redacted] CX0338 at NTSP 014660.

268. On December 6, 2000, NTSP reported to its members that [redacted] had set a cut off date of [redacted] for physicians to contract for the [redacted] PPO product through NTSP's [redacted] affiliation agreement. Failure to reject the contract by the deadline resulted in acceptance of the PPO contract and fee schedule. CX0706 at NTSP 005083-85.

269. NTSP assessed the [redacted] PPO offer at [redacted] RBRVS. CX0706 at NTSP 005083-85.

270. On December 11, 2000, the NTSP Board reviewed a listing of responses from the membership for the [redacted] PPO offer. CX0075 at NTSP 008212-15.

271. On March 9, 2001, NTSP received an update from [redacted], regarding [redacted] contracting status with [redacted]. CX0709 at NTSP 003113-14.

272. On March 13, 2001, [redacted] wrote to the [redacted], stating that [redacted]. CX0709 at NTSP 003113.

273. [redacted] that [redacted]

[redacted]

[redacted]" CX0709 at NTSP 003113.

274. [redacted] found [redacted] statement [redacted]

[redacted] CX0709 at NTSP 003113.

275. NTSP requested [redacted]s assistance in facilitating a meeting with [redacted] to see if [redacted] contracting relationship could be developed."CX0709 at NTSP 003113.

276. NTSP informed [redacted] that it [redacted]

[redacted] CX0709 at NTSP 003113.

277. The letter included a request that [redacted]

[redacted] noted that [redacted]

[redacted] stated that [redacted]

[redacted] CX0709 at NTSP 003113.

278. On March 26, 2001, it is reported to the NTSP Board, referring to the letter to [redacted], that [redacted].

CX0082.

279. Between late March and early April, [redacted] raised the issue with [redacted] that [redacted] allegedly [redacted] to meet with NTSP. Proposed CX0248 at FTC-NTSP-[redacted] 000017.

280. On April 3, 2001, [redacted] is confused by [redacted] concerns and is unclear as to why [redacted] thinks [redacted] had to go through NTSP to add physicians to its

network. Proposed CX0248 at FTC-NTSP-[redacted] 000017.

281. [redacted] stressed that [redacted] needed more access points to [redacted] system, and that this could impact the negotiations between [redacted] and [redacted] Proposed CX0248 at FTC-NTSP-[redacted] 000016.

282. [redacted] decided to offer NTSP "standard rates" and arranged a meeting with [redacted]. Proposed CX0248 at FTC-NTSP-[redacted] 000016.

283. On April 10, 2001, [redacted] met with NTSP to discuss a possible contractual relationship. Proposed CX0248 at FTC-NTSP-[redacted] 000018-19.

284. On April 16, 2001, [redacted] reported that [redacted] is [redacted] The Board [redacted] CX0085 at NTSP 003188.

285. On April 17, 2001 [redacted] wrote an email to NTSP's, [redacted], informing NTSP that [redacted] Proposed CX0710 at NTSP 070801-803.

286. On April 18, 2001, [redacted] replied to [redacted] stating that [redacted] Proposed CX0710.

287. In his email, [redacted] continued, [redacted]

[redacted] Proposed CX0710.

288. The same day, April 18, 2001, [redacted] replied to [redacted] that [redacted]

[redacted]

[redacted] Proposed CX0710.

289. On April 19, 2001, [redacted] requested a complete HMO fee schedule from [redacted]. CX0711 at NTSP 070331-35.

290. On May 4, 2001 [redacted] asks [redacted] if the [redacted] Proposed CX0710.

291. On May 8, 2001, [redacted] replied to [redacted] email and informed him [redacted] CX0711 at NTSP 070331-35.

292. On June 21, 2001, [redacted] sent its PPO offer, at [redacted] and HMO offer at [redacted] to NTSP. CX0712 at NTSP 003697.

293. On June 25, 2001, [redacted] reports to Board that offer is [redacted] CX0089 at NTSP003674-78.

294. On July 10, 2001, NTSP reports to it Primary Care Council that NTSP has [redacted] on its [redacted] negotiations [redacted]." NTSP further notes that the [redacted] rates are far below "Board minimums." CX0210 at NTSP015271 - 015275.

VI. NTSP Collectively Raised Physician Reimbursement Rates for [redacted]

The factual evidence of NTSP's dealing with [redacted] indicates that NTSP's collectively-negotiated price led to higher prices. In 2001, [redacted] estimated that it would have to pay higher prices and incur higher costs for the NTSP physicians

already within the [redacted] network if it contracted with NTSP at NTSP's demanded rate of [redacted] percent of [redacted] RBRVS. Ultimately [redacted] contracted with the NTSP network at what [redacted] has calculated to be 19 percent higher cost for HMO services and [redacted] percent higher cost for PPO services. CX0752 at FTC-NTSP-[redacted] 001459-63; CX0755 at FTC-NTSP-[redacted] 001671-1990; CX1151 at 14.

295. In August 1998, NTSP physicians sent substantially identical letters to [redacted] in which [redacted] CX0760 at FTC-NTSP-[redacted] 000234 - 000273.

296. On October 15, 1999, [redacted] met NTSP's FFS rate demand and agreed to pay NTSP member specialists [redacted] RBRVS for participation in its FFS HMO. [redacted] CX0764 at FTC-NTSP-[redacted] 001324.

297. On October 6, 2000, NTSP's [redacted] sent a letter to [redacted] stating that [redacted] CX0349 at FTC-NTSP-[redacted] 000439-40; CX0777 at FTC-NTSP-[redacted] 001466.

298. On October 16, 2000 [redacted], sent a letter to [redacted] stating that [redacted] The letter also states that [redacted] CX0781

at FTC-NTSP-[redacted]000441; CX0777 at FTC-NTSP-[redacted]001464.

299. On November 3, 2000, [redacted] emailed NTSP stating that [redacted] CX0785 at NTSP071730 – 31.

300. On November 9, 2000, NTSP sent a letter to [redacted] indicating that [redacted] CX786 at [redacted]000886 [redacted]

301. On December 1, 2000, NTSP wrote to [redacted] that [redacted] CX0791 at FTC-NTSP-[redacted]000463.

302. On May 30, 2001, NTSP e-mailed [redacted] stating that [redacted] CX0796 at NTSP069300-01; CX0795 at FTC-NTSP-[redacted] 001598.

303. On June 7, 2001, NTSP e-mailed [redacted] seeking [redacted]

CX0800 at FTC-NTSP- 001595.

304. By return email that same day

CX0800 at FTC-NTSP- 001596).

305. On August 21, 2001, NTSP informed that

NTSP also stated that

CX0813 at NTSP068668.

306. On October 15, 2001, NTSP's Board accepted the results of a poll as not changing the effective minimums of HMO and PPO [" "], and instructed staff to use these as minimums for contract offers. CX0103 at NTSP004633-38, 36.

307. On October 29, 2001, relayed The results showed that the HMO Mean was and the PPO Mean was CX0628 at NTSP 014846.

308. On September 16, 2002, NTSP rejected fee for service rates to NTSP/ PCPs.

CX0754 at FTC-NTSP- 1670.

VII. [redacted] Concluded that NTSP's Board Minimums Were Not Justified

The factual evidence of NTSP's dealing with [redacted] indicates that NTSP's collectively-negotiated price led to higher prices. In December of 2000 NTSP and [redacted] negotiated a fee-for-service agreement [redacted] had to pay [redacted] percent of RBRVS for HMO medical services under the NTSP agreement, but previously was paying only about [redacted] percent of RBRVS for the same services under competition. NTSP received a large premium over [redacted] standard rates, 19 percent for HMO and [redacted] percent for PPO. CX0569 at FTC-NTSP-[redacted] 001503; CX0265 at NTSP 014450; CX1151 at 13-14.

A. NTSP jointly negotiated rates with [redacted] for non-risk contracts

309. Prior to NTSP's direct involvement with [redacted], many of NTSP's members were contracted with [redacted] (referred to herein as "[redacted]") to provide physician services pursuant to [redacted] agreements with [redacted] CX0516 at FTC-NTSP-[redacted] 001694-1713.

310. [redacted] was a Texas corporation that recruited and contracted with Tarrant County physicians and physician associations to provide a network of physician services for health plans. CX0516 at FTC-NTSP-[redacted] 001694-1713.

311. In early June 2000, NTSP scheduled a meeting with [redacted] to discuss future business and contract arrangement between the payor and NTSP physicians. CX0500 at NTSP 014533 ([redacted].

312. Minutes of an August 2, 2000 General Membership Meeting recorded that [redacted]

[redacted]

CX0178 at NTSP 014507.

313. In a fax alert, dated August 7, 2000, [redacted] informed [redacted]

that [redacted] NTSP asked its member to [redacted] CX0942 at NTSP 005140-005141.

314. NTSP's August 7, 2000 Board Minutes states that, [redacted] CX0061 at NTSP 007055; CX0538 at [redacted] 005755-56.

315. On September 29, 2000, [redacted] of [redacted] wrote to [redacted] CX0528 at FTC-NTSP-[redacted] 0000010-000028.

316. On October 2, 2000, at a General Membership Meeting, NTSP reported that [redacted] CX0179 at NTSP 014309.

317. An October 5, 2000 Fax Alert reported, describing that [redacted]

CX0347 at NTSP 007674-007677.

318. sent .

CX0534 at NTSP 007787-95; Proposed CX0657.

319. An October 9, 2000

Proposed CX0550.

320. The letter further states that,

[redacted] Proposed CX0550.

321. [redacted] of [redacted] wrote to [redacted] on October 20, 2000: [redacted] CX0792 at NTSP 071837-071849.

322. Minutes from a Board Meeting on October 23, 2000 reflect that [redacted] stated that [redacted] Proposed CX0717.

323. On October 24, 2000, [redacted] emailed [redacted] that [redacted]

[redacted] CX0543 at FTC-NTSP-[redacted]001494; CX0540 at NTSP 071835-071837, CX0544 at NTSP 071763, CX0594 at FTC-NTSP-[redacted]000006-000007.

324. On November 1, 2000, [redacted] emailed to [redacted] CX0544 at NTSP 071761-071765.

325. [redacted] replied on November 2, 2000 that [redacted] CX0544 at NTSP071761-071762; CX0627 at FTC-NTSP-[redacted]0000064-0000065.

326. November 7, 2000, [redacted] informs [redacted] that [redacted] Proposed CX0659.

B. NTSP collects powers of attorney and urges its members not to sign individual contracts

327. In a fax alert, dated November 10, 2000, NTSP asked [redacted]. CX0548 at NTSP005105-005106; CX0459 at NTSP 014577.

328. On November 10, 2000, [redacted] informed [redacted] of [redacted] that [redacted]. CX0544 at FTC-NTSP-[redacted] 001087; CX0558 at NTSP 071715-17.

329. [redacted] also informed [redacted] that [redacted]" CX0554 at FTC-NTSP-[redacted] 001087; CX0558 at NTSP 071715-17.

330. On November 13, 2000, NTSP's Board reported that [redacted] CX0071 at NTSP 007981, 007984.

331. On November 16, [redacted] sent the following email to [redacted], and others:

"[redacted]

[redacted] CX0559 at FTC-NTSP-[redacted]001082; CX0560 at NTSP 071676-071679.

332. On November 20, [redacted] sends an email to [redacted] CX0560 at NTSP 071676-071679.

333. On November 17, 2000, NTSP updated its Division Chiefs on the [redacted] negotiations and fee schedule, and received feedback. CX0193 at NTSP 045777-045778.

334. On November 21, 2000, NTSP and [redacted] were still apart by [redacted] on the HMO fee schedule. CX0083 at NTSP 001445.

335. This was discussed at the General Membership Meeting on November 21, 2000. CX0180 at NTSP 008445.

336. On November 29, 2001, NTSP sent [redacted] to its members stating that

[redacted]

CX0565 at NTSP 005086-005088.

C. As part of the joint negotiations, NTSP polls its members to establish minimum compensation rates

337. The fax contained a polling ballot and included the following: [redacted]

[redacted] CX0565 at NTSP 005086-005088.

338. The polling ballot listed [redacted] CX0565 at NTSP 005086-005088.

339. By December 4, [redacted] responses had been received with the majority choosing the [redacted] range. CX0074 at NTSP 008298, 8301.

340. On December 7, 2000, [redacted] wrote an internal email stating the following: [redacted] CX0569

at FTC-NTSP- 001503.

341. On December 8, sent the results to . CX571.

342. On December 11, NTSP sends containing the following statements:

[Capitalization and bolding are as in original]. CX0500 at NTSP 014553; CX0573 at NTSP 005080.

343. On December 12, 2000, wrote to

CX0576 at NTSP 005077-005079.

344. included a sheet of bullet pointed statements to be included in the faxes, entitled: CX0576 at NTSP 005077-005079.

345. The fact sheet included the following statements regarding NTSP's departicipation from HMO product:

" CX0576 at NTSP 005077-005079.

346. On December 12, 2000, wrote to to inform him

that [redacted] CX0578.

347. On December 13, 2000, [redacted] replied to [redacted] CX0580 at FTC-NTSP-[redacted] 00296.

348. On December 30, 2000, [redacted] calculated that from the list of physicians [provided by NTSP] who had signed a power of attorney with NTSP, [redacted] were contracted with [redacted] Proposed CX0656 at FTC-NTSP-[redacted]000145A - 180A.

349. [redacted] had direct contracts with [redacted] listed physicians. Proposed CX0656 at FTC-NTSP-[redacted]000145A - 180A.

350. [redacted]) listed physicians had contracted with [redacted] through [redacted]). FTC-NTSP-[redacted]A000145A - 180A

351. [redacted] had no existing contractual relationship with [redacted] of NTSP's listed physicians. Proposed CX0656 at FTC-NTSP-[redacted]000145A - 180A.

352. On December 14, 2000, [redacted] a member of NTSP, wrote to [redacted]

[redacted]" CX0583 at JJ 001332.

353. On December 14, 2000, [redacted], wrote to [redacted] of the [redacted] CX0584.

354. On December 15, 2000, NTSP received [redacted] final proposed IPA agreement which included the statement, "[redacted] Proposed CX0660.

355. On December 18, 2000, [redacted] reported to the NTSP Board that the

PPO contract had been completed [redacted] referred the Board to a letter from [redacted] [redacted] further reported that negotiations would continue with [redacted] of [redacted] on an HMO contract. A lengthy discussion ensued regarding an acceptable fee schedule for the HMO contract. It was noted that the membership's poll response was [redacted] The Board instructed NTSP to present [redacted] with [redacted] for the HMO product. CX0076 at NTSP 008449.

356. On December 18, 2000, [redacted], wrote to [redacted] NTSP's proposal included, [redacted] further proposed that [redacted] CX0585 at FTC-NTSP-[redacted] 000080-81.

357. On December 19, 2000, [redacted] wrote to [redacted], with [redacted] proposal reflecting NTSP's proposed rates, but noting that [redacted] The email closed, [redacted] at FTC-NTSP-[redacted] 000080-81.

358. On December 19, 2000, [redacted] reported that she consulted NTSP

Board members who agreed that [redacted] proposal was [redacted] also stated that NTSP's members would be informed that [redacted] CX0585 at FTC-NTSP-[redacted]000080-81.

D. NTSP agrees to a contract with [redacted] that meets the Board minimums

359. In late December 2000, NTSP entered into agreement with [redacted], and informed its membership. [redacted] 00678; NTSP 000782, 801; NTSP 015068.

360. On January 4, 2001, [redacted] "messengered" the [redacted] offer to its members.. Physicians that did not respond were deemed to have accepted the offer. CX0599 at NTSP015204-205; CX0597 at NTSP 004809-12.

361. On January 8, 2001, [redacted] outlined the [redacted] contract including the reimbursement rates to the membership at NTSP's General Membership Meeting. A table of [redacted] was provided. CX0615 at NTSP 014491.

362. On July 10, 2001, [redacted], recorded the following from their Board of Directors Meeting, [redacted]

[redacted]

[redacted] CX0256 at FTC-NTSP-[redacted] 009052-54.

363. On August 10, 2001, NTSP submitted its proposal to [redacted] for FFS products. CX0616 at FTC-NTSP-[redacted] 000084-95.

E. [redacted] attempts to renegotiate a new contract at lower rates

364. On September 28, 2001, [redacted] wrote to [redacted], stating [redacted]. CX0644 at [redacted] 000029-54

365. On October 8, 2001, the NTSP Board reviewed [redacted] termination letter and decided to continue negotiations with [redacted] CX0102 at NTSP 004694-96.

366. [redacted] informed the Board that [redacted] new proposed rates will be lower and that negotiations will be arduous. CX0102 NTSP 004694-96.

367. On October 15, 2001, the NTSP Board received and accepted the results of NTSP's membership poll. The NTSP Board instructed NTSP staff to use the minimums of [redacted] HMO and [redacted] PPO of current medicare. CX0103 at NTSP 004633.

368. On October 22 and 24, 2001, [redacted], of [redacted], e-mailed [redacted] 0000001349, 1375.

369. On October 29, 2001, the results of the poll were shared with its members by fax and at a General Membership Meeting at which members also received an update on the ongoing [redacted] negotiations. CX1002 at NTSP 014430; CX0303 at NTSP 014432.

370. On October 30, 2001, [redacted] informs NTSP that members will be contracted at [redacted]. CX0629 at NTSP 003921.

371. On November 1, 2001, [redacted] sent utilization data to [redacted] and in an attached letter [redacted] stated, [redacted] CX0553 at FTC-NTSP 001735-001741.

372. On November 5, 2001, NTSP's Board [redacted] CX0104 at NTSP 004170-71.

F. [redacted] finds NTSP's efficiency claims not credible

373. On November 6, 2001, [redacted] informed NTSP that the data NTSP presented as a stand-alone entity is not [redacted]" in actuarial terms. [redacted] further informed NTSP that an analysis of its own data did not support NTSP's conclusions: [redacted]

374. On November 7, 2001, [redacted] replied in part that [redacted]

[redacted]. CX0502 at FTC-NTSP-[redacted] 001744.

375. On November 7, 2001, NTSP affiliate, [redacted], drafted a fax to its [redacted] or so members who are also affiliated members of NTSP. CX0267; CX0259.

376. The [redacted] fax noted that [redacted]. CX0267.

377. The fax continued: [redacted] CX0267.

378. On November 12, 2001, [redacted] and [redacted] from [redacted] came and addressed the Board in regards to [redacted] proposal. [redacted] offered an overall reimbursement

average of [redacted] for the HMO product and [redacted] for the PPO contract. CX0106 at NTSP 003877.

379. The NTSP Board decides to alert the membership that the [redacted] contract is under advisement. CX0106 at NTSP 003877.

380. On November 19, 2001, [redacted] terminated all contracts for [redacted] physicians effective [redacted]. The affected NTSP physicians were able to contract under the NTSP contract. CX0637 at ACE 0908.

381. On November 19, 2001, [redacted] CX0107 at NTSP 001937-38.

382. On November 28, 2001, [redacted] reported internally that the NTSP Board thought they could convince [redacted] executives to agree to maintain the current fee schedule or increase [redacted] offer. [redacted] also indicated to [redacted] that the Board had discussed applying for a [redacted]. Proposed CX0656.

383. [redacted] also performed a [redacted] noting a [redacted] disruption in primary care physician services as well as [redacted] potential needs within 6 specialty types. [redacted] recommended not raising [redacted] offer to NTSP and instead attempting a direct contracting effort with NTSP's physicians. [redacted]

Proposed CX0656.

384. On December 3, 2001, [redacted] of [redacted] wrote to [redacted] informing [redacted] that [redacted] CX0640 at NTSP 014799.

385. On December 7, 2001, NTSP informs it members that [redacted] proposal fell [redacted] NTSP informs it members that they may contract directly with [redacted] or request that [redacted] re-open negotiations with NTSP. CX0643.

VIII. NTSP Has Not Created Efficiencies that Necessitate Collective Price-Setting for Non-Risk Contracts

386. NTSP generates no efficiencies for which fixing fee-for-service prices is ancillary or reasonably necessary. CX1151 at 5.

387. Physician practice patterns do vary according to the physicians financial incentives. CX1150 at 24.

388. Capitation is an attempt to alter physician practice patterns based on a financial incentive, as are initiatives which pay physicians for improved quality of care.

389. Physicians should and do generally know what type of insurance a patient carries. CX1150 at 25.

390. Physicians practicing medicine in the same manner for risk and non-risk patients will do so regardless of whether their non-risk contracts were the result of joint price negotiation. CX1150 at 25.

391. Any benefit derived from changes in physicians behavior resulting from what a

physician has learned in caring for risk patients is similarly unrelated to the ability of the physician to participate in joint price negotiation. CX1150 At 25-26.

392. Although considerations of efficiency may warrant joint price setting with respect to the [redacted] and [redacted] agreements, those efficiency considerations have no applicability to the other health plan contracts. Physicians in the same specialty are direct competitors, and coordination of prices is not in principle necessary to the offering or efficiency of services rendered under fee-for-service contracts. Any efficiency spillover from the shared risk contracting to the fee-for-service contracts would be unrelated to any joint setting of fee-for-service contract prices. CX1151 at 16.

393. There has been little or no use of the tools of clinical integration developed by NTSP in the risk-sharing context in its physicians' fee-for-service medical practices. For example, [redacted] was asked [redacted] CX1196 at 20 (Van Wagner depo); CX1151 at 16.

394. By many devices of maintaining group solidarity, NTSP makes it more costly and less timely to contract independently. This collective behavior raises the cost of going around NTSP to contract directly with physicians, and thus raises the price it can extract from plans and consumers. CX1153 at 8.

395. With regard to fee-for-service contracts, representatives of a number of the major health plans in the Fort Worth area do not believe that: a) NTSP provides efficiencies; or b) that the plans were buying efficiencies when they paid higher rates to obtain a contract with NTSP. CX1153 at 9.

396. NTSP has implemented very few organized processes to improve the quality of care for its risk patients. NTSP has focused on utilization management for these patients, rather than quality improvement. Poor quality is generally considered to result from the overuse, misuse, and underuse of care. Utilization management does improve quality insofar as it reduces overuse, but does nothing for misuse and underuse. There is a growing consensus that improving quality requires the use of organized processes (called "Care Management Processes," or "CMPs"), but to the extent that NTSP risk patients benefit from these processes it is through the efforts of health plans rather than of NTSP. CX1150 at 3.

397. NTSP has no organized processes in place to control the costs and/or improve the quality of care for patients in non-risk contracts. CX1150 at 4.

398. Since NTSP does not use organized processes to improve care for its non-risk patients, and has undertaken no other significant initiatives to control costs and to assure quality of care for these patients, NTSP physicians lack both the ability and the incentive to care for these patients with the level of interdependence, collaboration, and cooperation that can be achieved in physician organizations. CX1150 at 4-5.

399. There is no evidence that NTSP's palliative care program is widely used even for NTSP's risk patients. CX1195 at 122-25 (Van Wagner depo); CX1150 at 11.

400. NTSP does not apply its systems for managing costs to any of its non-risk patients. It is not possible to apply profiling processes for non-risk patients, because, except for [redacted], NTSP does not receive claims data for them, and it is difficult if not impossible to use utilization management processes, given the lack of an assigned primary care physician gatekeeper and lack of authority to pre-authorize services in most non-risk products. CX1150 at

12.

401. NTSP leaders gave few specifics as to how the organization improves quality. CX1150 at 13.

402. NTSP physicians gave no specifics of quality-improving processes or of ways in which the organization gives them incentives or tools to improve quality. CX1150 at 13.

403. NTSP's [redacted] states that [redacted] in terms of clinical integration for the care of non-risk patients. CX1196 at 221 (Van Wagner depo).

404. The word "quality" almost never appears in NTSP "Fax Alerts," agendas, and minutes for NTSP general membership, Board of Directors, divisional, and Primary Care Physician Council meetings; and discussion of processes to improve quality (even allowing for the absence of use of the word) are unusual. The fax alerts, general membership meetings, and Primary Care Physician Council meetings focus primarily on issues related to [redacted] The Board of Directors meetings also focus on contracting and costs, as well as general operational issues. The Medical Management Committee agendas and minutes indicate that [redacted] CX1150 at 13.

405. During the last year or two, NTSP has had a separate Quality Committee, but this Committee is not very active. [redacted] CX1150 at 13-14.

406. NTSP does not foster coordination of care between primary care physicians and specialists. NTSP has not permitted primary care physicians to be full members [redacted]

[redacted]

[redacted]Although Primary Care Physicians were given a "Primary Care Council" in 2001 to serve an advisory role, it primarily acted as a conduit from the NTSP board to primary care physicians about contracting issues. The word "quality" rarely if ever appears in PCP Council agendas or minutes. CX1150 at 16.

407. NTSP does not have its own disease management programs for such illnesses as

[redacted]

[redacted]NTSP leaders admit they rely on HMOs' disease management programs. NTSP does have nurse case managers, but these focus on controlling costs through working to keep NTSP risk patients' length of stay in the hospital as short as possible and through coordinating discharge from the hospital, rather than through providing care management services such as those just described. NTSP physicians did not mention the organizations' nurse case managers as examples of quality-improving processes operated by the organization. CX1150 at 17.

408. For patients under fee-for-service HMO or PPO contracts, NTSP appears to make no use of information technology to control costs or to improve quality. NTSP is unable to use its information technology for non-risk patients because, with the exception of [redacted] it has been unable to obtain claims data on these patients. CX1150 at 18.

409. Unlike some medical groups and IPAs, NTSP does not base any of its compensation for individual physicians on their clinical performance. CX1150 at 19.

410. During the past two years, some NTSP divisions have begun to develop indicators to track regarding the quality of care. However, not very many indicators have been created. Furthermore, it is not clear how information about these indicators is distributed, whether it is

distributed to all NTSP physicians or only to physicians participating in risk contracts, to what extent performance on these indicators is tracked and what, if anything, is done if performance on them is found to be poor. The indicators are used only for risk patients, since the organization lacks data to assess the quality of care. CX1150 at 20.

411. Contemporary approaches to quality improvement emphasize systematic approaches, using organized processes, to improve the quality of medical care. CX1150 at 25.

412. NTSP uses relatively few such processes for its risk patients, and few if any for its non-risk patients. CX1150 at 25.

413. Although the lack of patient claims data is a significant barrier to implementing a full program of physician collaboration, NTSP could have taken some initiatives, even without claims data to improve care of non-risk patients. These initiatives include:
CX1150 at 27.

414. If NTSP had a nurse case manager providing care for risk patients with congestive heart failure or emphysema (for example), the organization could emphasize informing all its physicians that this program is available for non-risk patients as well. Without claims data, NTSP would not be able to identify appropriate patients through a database, but individual physicians could be encouraged to identify and refer appropriate patients as they see them. CX1150 at 27.

415. If NTSP had patient education classes and/or group visits for risk patients with chronic diseases, the organization could inform all physicians that these services are available for their non-risk patients as well. CX1150 at 27.

416. NTSP could create and send patient care protocols and guidelines to all its

physicians, including those who do not participate in risk contracts. CX1150 at 27.

417. NTSP could, as some IPAs do, perform periodic site visits to inspect the offices of all its physicians for various indicators of clinical and service quality. This would benefit non-risk as well as risk patients. CX1150 at 27.

418. NTSP could conduct periodic medical record (i.e. chart) reviews of the quality of care for individual patients provided by its risk and non-risk physicians. NTSP does this for neither now. CX1150 at 27.

419. Since NTSP does does not use organized processes to improve care for its non-risk patients, and has undertaken no other significant initiatives to control costs and to assure quality of care for these patients, NTSP physicians lack both the ability and the incentive to care for these patients with the level of interdependence, collaboration, and cooperation that can be achieved in physician organizations. Casalino Rep. 4.

APPENDIX

[REDACTED IN ITS ENTIRETY]

GLOSSARY:

Capitation: A monthly fee paid for each of the HMO's patients who is enrolled with the primary care physician or with one of the primary care physicians in a physician organization. CX1150 at 6.

Credentialing: A managed care function that an HMO delegate to the physician organization with which it is contracted rather than performing themselves. *Based on*: CX1150 at 7.

Fee Schedule: A list of predetermined payment rates for various medical services.*

FFS: Fee For Service. A set payment for each health care service (doctor's visit, injection, x-ray, etc) performed.*

HMO: Health Maintenance Organization. HMOs may contract with physicians or physician organizations on a risk or a non-risk basis. In traditional risk contracting, the HMO requires that all patients choose a primary care physician "gatekeeper." or coordinator of care. The HMO pays the primary care physician or physician organization via a capitation fee. CX1150 at 6.

Medical Group: (sometimes called an "integrated medical group) is a single practice, of which each physician is an owner or employee. The group has a single bottom line, single information systems and single staff. CX1150 at 6.

IPA: Independent Physicians Association. An organization created for the specific purpose of contracting with health plans. CX1150 at 6.

Managed Care: A system of health care delivery that influences utilization of services, cost of services and measures performance. The goal is a system that delivers value by giving people access to quality, cost-effective health care.*

Messenger Model: Messenger models whereby IPA's can facilitate physician contracting can be

organized and operate in a variety of ways. For example, network providers may use an agent or third party to convey to purchasers information obtained individually from the providers about the prices or price-related terms that the providers are willing to accept.(64) The agent may convey to the providers all contract offers made by purchasers, and each provider then makes an independent, unilateral decision to accept or reject the contract offers. In others, the agent may have received from individual providers some authority to accept contract offers on their behalf. The agent also may help providers understand the contracts offered, for example by providing objective or empirical information about the terms of an offer (such as a comparison of the offered terms to other contracts agreed to by network participants). DOJ FTC Guidelines at U.S. Dep't of Justice & Fed. Trade Comm'n, Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153 (August 28, 1996).

Physician Participation Agreement/Contract:

POS: Point of Service Plans. A new type of managed care plan that allows members to use out-of-network providers for covered services.*

PPO: Preferred Provider Organization. PPO health plans contract (usually with individual physicians rather than groups) on a discounted fee-for-service basis and do not pass financial risk to physicians. PPO's do not use gatekeeper primary care physicians. CX1150 at 8.

PSN: Provider Sponsored Network

Quality Improvement: a managed care function that an HMO delegate to the physician organization with which it is contracted rather than performing themselves. *Based on*: CX1150 at 7.

RBRVS: Medicare's Resource Based Relative Value System

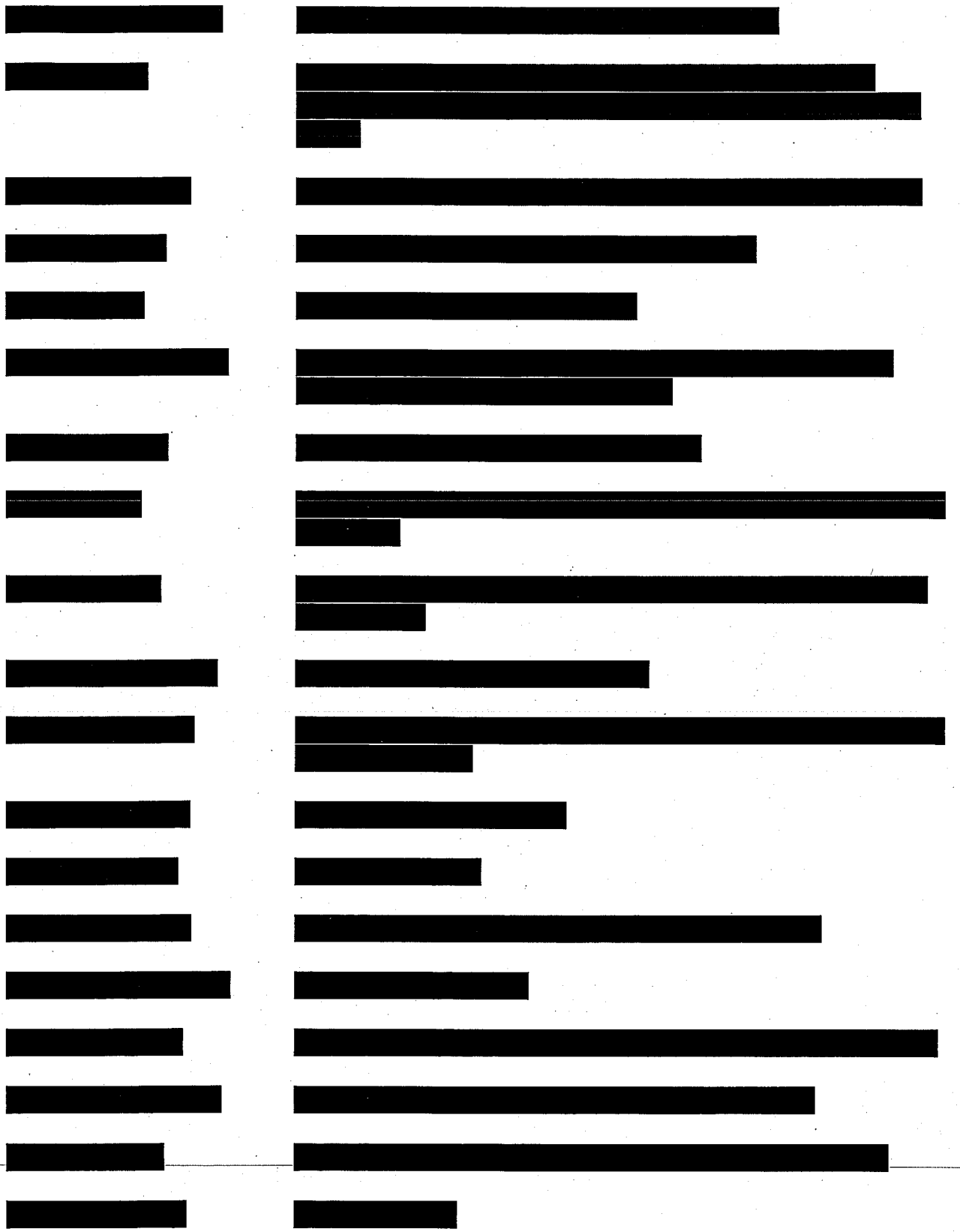
REF: Reasonable and Equitable Fee schedule

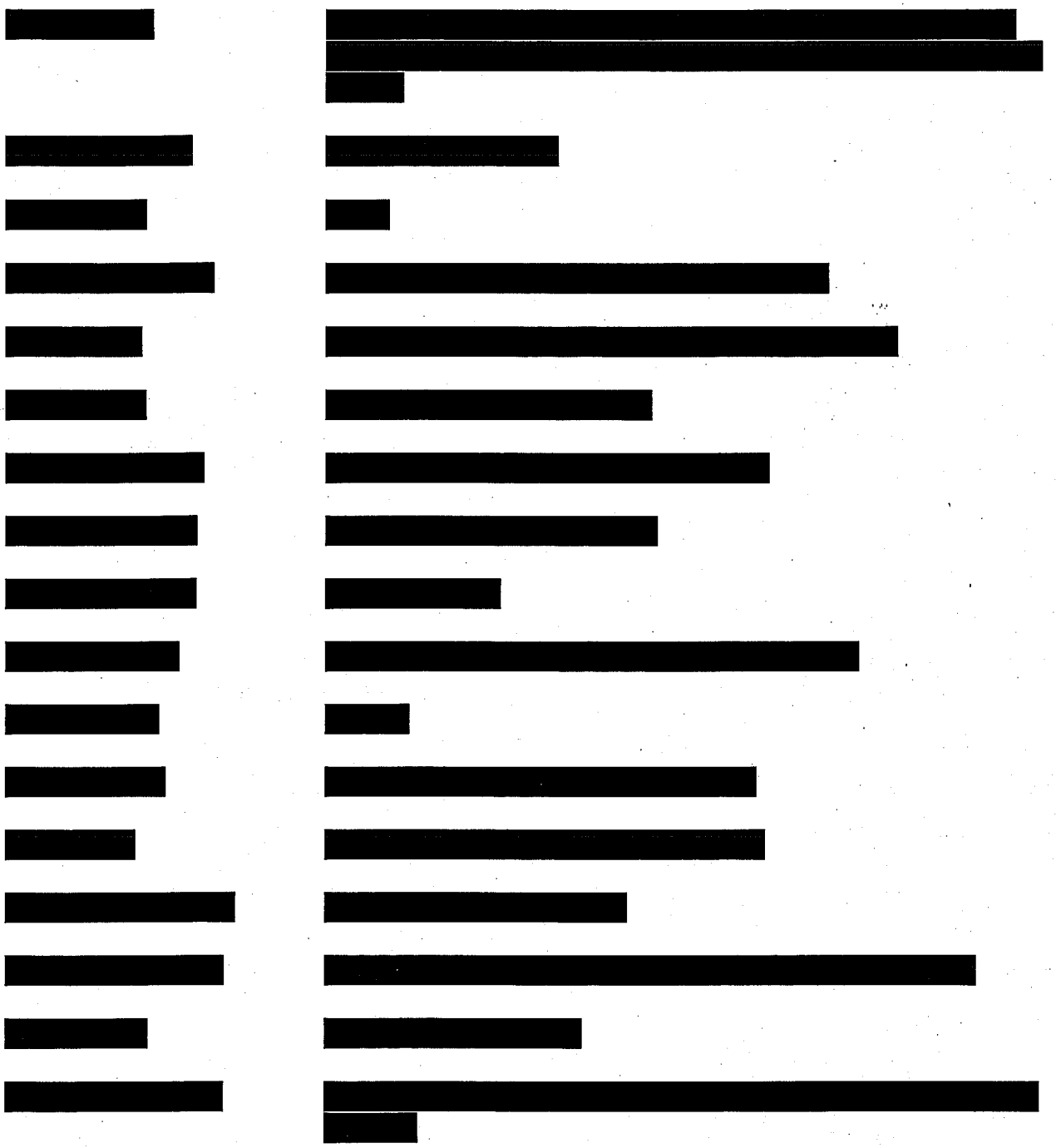
Risk Contract, Risk Sharing Arrangements:

Utilization Management: a managed care function that an HMO delegate to the physician organization with which it is contracted rather than performing themselves. *Based on*: CX1150 at 7. (from Yale medical group) A process that measures use of available resources, including professional staff, facilities and services, to determine medical necessity, cost-effectiveness, and conformity to criteria for optimal use.*

* Yale Medical Group's Guide to Health Insurance and Managed Care, available at http://info.med.yale.edu/yfp/managed_care_terms.html

INDEX OF NAMES: [PP 77 TO 79 REDACTED IN ITS ENTIRETY]





CERTIFICATE OF SERVICE

I, Eli Barach, hereby certify that on April 14, 2004, I caused a copy of Complaint Counsel's Proposed Findings of Fact to be served upon the following persons:

Office of the Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room H-104
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Washington, D.C. 20580

Gregory S. C. Huffman, Esq.
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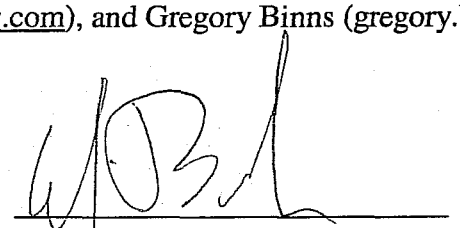
and by email upon the following: Gregory S. C. Huffman (gregory.huffman@tklaw.com), William Katz (William.Katz@tklaw.com), and Gregory Binns (gregory.binns@tklaw.com).



Eli Barach