

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
)
NORTH TEXAS SPECIALTY)
PHYSICIANS,)
)
a corporation.)
_____)

Docket No. 9312

**NON-PARTY UNITED HEALTHCARE OF TEXAS, INC.'S MOTION TO
QUASH OR LIMIT THE SUBPOENAS SERVED BY NORTH TEXAS
SPECIALTY PHYSICIANS**

Pursuant to Rule 3.34 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings ("Rules of Practice") 16 C.F.R. § 3.34(c), non-party United HealthCare of Texas, Inc. ("United") respectfully moves to quash or limit certain specifications in the subpoena duces tecum dated December 18, 2003 (Exhibit 1) and the subpoena ad testificandum dated January 12, 2004 (Exhibit 2) issued on behalf of North Texas Specialty Physicians ("NTSP"). Counsel for United and NTSP have conferred, in accordance with Rule 3.22(f) of the Rules of Practice, 16 C.F.R. § 3.22(f), and have been unable to resolve all of the issues raised in the subpoena. *See* Declaration of Helene D. Jaffe (Jan. 23, 2004) (hereinafter "Jaffe Decl.") at ¶12 (Exhibit 3).

INTRODUCTION

On September 16, 2003, the Federal Trade Commission ("FTC") filed a complaint against NTSP, an independent physician association ("IPA") operating in the Fort Worth area. The crux of the complaint is that "NTSP, acting as a combination of competing physicians, and in combination with physicians and other physician

organizations, has restrained competition among its participating physicians” in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. §45. *In the Matter of North Texas Specialty Physicians*, No. 9312 (hereinafter the “FTC Complaint”), at ¶12. In late December, NTSP served United, a non-party in this action, with a subpoena duces tecum (“Subpoena”) via certified mail. The Subpoena requested that United produce broad categories of documents, including categories which were unrelated to the allegations in the FTC Complaint, by January 2, 2004 -- after the end-of-year holidays and on a day when many offices and courts were closed. NTSP later agreed that United could respond on a rolling basis beginning on January 9, 2004. Jaffe Decl. at ¶¶4,5. To date, United already has produced thousands of pages of documents and continues to produce broad categories of documents pursuant to its agreement with counsel for NTSP. *Id.* at ¶8. On January 12, 2004, NTSP also served United with a subpoena ad testificandum (“Deposition Notice”) pursuant to Rule 3.33(c). The topics of examination listed on the Deposition Notice closely track the document requests made in the Subpoena. Although United and NTSP have worked together to limit the scope of both the Subpoena and Deposition Notice, on January 21, 2004, the parties reached an impasse. *See* Jaffe Decl. at ¶¶7,12.

As detailed more fully below, not only are the documents and testimony demanded totally irrelevant to the current investigation, but production of the documents would be extremely burdensome given the technology required and the sensitivity of the information that must be reviewed. For example, the data requested in Specification Nos. 2 and 3 was produced in a completely unrelated investigation of United’s claims practices pursuant to a Written Notice of Intent to Inspect, Examine and Copy Corporate

Documents (the “Written Notice”) issued by the Texas Attorney General. No data produced in response to this Written Notice in any way relates to United’s reimbursement policies, let alone the reimbursement policies of providers -- the actual subject of the current proceedings. Moreover, United only produced the data to the Texas Attorney General after it was assured that the data would receive the utmost confidentiality protection under the law. Thus, it did not review or redact the data for Protected Health Information (“PHI”) as defined by Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) Privacy and Security Rules. Since virtually all of the classes of data produced in response to the Written Notice contain PHI, United would have to request that the Protective Order in place in this case be specifically amended to address the treatment of PHI information. As a result, United may have to undertake an extensive review and redaction of the data which would place a tremendous burden on its human and technological resources. This burden significantly outweighs any potential benefit that NTSP would receive from the data, in light of its lack of relevance to this proceeding.

ARGUMENT

Under FTC Rules of Practice a subpoena duces tecum must be “reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, and to the defenses of any respondent.” 16 C.F.R. §§ 3.34(b), 3.31(b)(1). An Administrative Law Judge in an FTC proceeding is given broad discretionary powers to limit or quash a subpoena where appropriate. Thus, he can quash or limit any subpoena that is unduly burdensome or would require the disclosure of privileged or confidential proprietary information. 16 C.F.R. §3.31(c)(1)(iii) (use of subpoena and

other discovery methods “shall be limited by the Administrative Law Judge” where the “burden and expense of the proposed discovery outweighs its likely benefit”); 16 C.F.R. §3.31(c)(2) (authorizing Administrative Law Judge to “enter a protective order denying or limiting discovery to preserve” a privilege). Furthermore, an Administrative Law Judge can modify a subpoena or otherwise limit the scope of permissible discovery so as to “deny discovery or make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense.” 16 C.F.R. §3.31(d)(1). Because, as outlined in more detail below, both NTSP’s Subpoena and Deposition Notice request information that would be irrelevant to the adjudication, burdensome to produce, and privileged, it must be quashed or limited.

I. SPECIFIC OBJECTIONS TO NTSP’S REQUESTS

A. The Subpoena Should Be Limited To Exclude Specification Nos. 2 and 3.

Specification Nos. 2 and 3 of NTSP’s Subpoena ask for the same data requested by the Attorney General of the State of Texas in an unrelated, confidential litigation:

All documents previously produced or otherwise sent to the Office of the Attorney General of the State of Texas concerning business relationships with healthcare providers in the State of Texas, including specifically but without limitation the documents provided in response to the Written Notice of Intent to Inspect, Examine and Copy Corporate Documents served in or about March 2002 (a sample of such Written Notice is attached hereto as Appendix A). [At your option, check registers as described in Class 6 of Exhibit C need not be produced].

Documents for the time period January 1, 2000 to June 30, 2002 described in Exhibits A through C of the above-referenced Written Notice of Intent to Inspect, Examine and Copy Corporate documents to the extent such documents are not produced in response to Request

No. 2 above. [At your option, check registers as described in Class 6 of Exhibit C need not be produced]. Such documents should be provided in electronic form only.

This data was only given to the Texas Attorney General after United had received repeated assurances that its confidentiality would be protected under Texas law and had negotiated a detailed protective order governing its submission. Because United was led to believe that the data would be adequately protected by the state, it was never reviewed for confidentiality, redacted, or otherwise treated to comply with HIPAA requirements. To force United to do so now would require this Court to place an untenable burden on a non-party. The burden on United is all the more striking when compared with the irrelevancy of the data to the current proceedings. Indeed, none of the data submitted to the Texas Attorney General in response to the Written Notice relates in anyway to the alleged price fixing by NTSP or to United's negotiations with the IPA. Thus, United objects to Specification Nos. 2 and 3 in their entirety.

Although NTSP agreed to limit these Specifications and accept only the data requested in the Texas Attorney General's Written Notice for Collin, Dallas, Denton, Ellis, Grayson, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, it remained steadfast in its position that the data should be produced because it was not burdensome for United to do so. Jaffe Decl. at ¶¶5,10,11. This argument is fundamentally flawed, however, because even if the request was not tremendously burdensome when compared to the relevance of the data sought in the subpoena -- which it is -- the law requires that the request in and of itself be relevant, which the Specifications are not. As the FTC's own operating manual notes, there are three tests for every subpoena duces tecum: "is it definite, is it relevant, and is it

reasonable.” *See* FTC Operating Manual Ch. 13.6.4.7.3. Clearly, passing one or two of the tests is not enough -- the subpoena must pass all three. NTSP’s does not.

1. **Compliance would result in the production of vast quantities of irrelevant and sensitive information.**

In March 2002, the Texas Attorney General issued a Written Notice which authorized and directed its Consumer Protection Division to investigate United for possible violations of Section 17.46(a) of the State’s Deceptive Trade Practices Act, Section 3 of the State’s Unfair Competition and Unfair Practices Act, and Article 21.21 of the Texas Insurance Code. *See* Exhibit 1, Appendix A. The six categories of data requested in Written Notice related to member eligibility, authorizations/referrals, disposition of claims or encounters, monthly capitation payments, claims adjudication, and check registers.¹ *See* Exhibit 1, Appendix A at Exhibit C. The data ultimately produced by United in response to the Written Notice was the result of a lengthy series of discussions with the Texas Attorney General in response to a detailed Written Notice. It was produced in a format that complied with the Attorney General’s customized requirements and included information that related not only to provider claims, but also member claims and claims subject to Administrative Service Only (“ASO”) agreements. *See* Declaration of Jennifer Cook (January 23, 2004) (hereinafter “Cook Decl.”) at ¶3 (Exhibit 4). None of that information is relevant to the antitrust price fixing allegations contained in the FTC’s Complaint. *Id.* Accordingly, it defies reason for NTSP to suggest that this information, collected for a limited purpose and containing such a broad range of

¹ NTSP only requested the data for five of the six categories, check registers could be excluded at United’s option. Exhibit 1, Specification 2 and 3.

data, would be relevant to an action brought by the FTC against an IPA for price fixing and other antitrust violations.

Moreover, while NTSP may claim that it is seeking to use this information to establish relevant market and market behavior which it could use to combat the allegations brought against it by the FTC, it is extraordinarily difficult to see how such data could accomplish those objectives, given that provider location and reimbursement policies were not captured by the data. Cook Decl. at ¶¶3,5. Indeed, whole categories of the Attorney General's request hardly touch on providers at all. Thus, for example, it is impossible to see how data on member eligibility would help in the defense of price fixing allegations by an IPA.

2. United's response to Written Notice contained confidential information which is not adequately protected by the Protective Order in this case.

Forcing United to produce the documents given to the Texas Attorney General would be tantamount to penalizing it for cooperating with a government investigation, thus implicating important public policy concerns. NTSP's subpoena forces United to disclose confidential and sensitive information that is protected under Texas law and a Protective Order agreed to by the Office of the Attorney General. *See* Declaration of Luis G. Zambrano (Jan. 23, 2004) (hereinafter "Zambrano Decl.") (Exhibit 5) at ¶4. Indeed, the Texas Attorney General issued the Written Notice pursuant to the Texas Miscellaneous Corporation Laws Act, Tex. Rev. Civ. Stat. Ann. Art. 1302-5.04 which prohibits the Attorney General from making the information public. By requesting the documents from United rather than the Texas Attorney General, NTSP is trying to circumvent the protections afforded to United's production.

United agreed to produce data in response to the Written Notice because it was assured that the data, and the sensitive information contained therein, would be protected under Texas law and the terms of the Texas Protective Order. United did not anticipate, however, that when it complied with the Texas Attorney General's request, a private party, in an unrelated action, would attempt to bypass the Texas Protective Order and use United's cooperation as a vehicle for unwarranted discovery of proprietary information. United should not, as a third party, be forced to disclose data and lose the protections it agreed to in the Texas Protective Order in an action in which it is not even a party. Nor should United be forced to potentially waive any privileges that might apply to the data without the protections of the Texas Protective Order.

The ramifications of responding to NTSP's subpoena extend well beyond the disclosure of United's confidential trade secret information, because the subpoena would require United to produce sensitive health information related to Texas patients. United's expectation that the documents it produced to the Texas Attorney General would be kept confidential is especially important given that the patient information disclosed to the Texas Attorney General is protected by the HIPAA as well as provisions of the Texas Insurance Code. HIPAA Privacy and Security Rules impose certain requirements on United relating to the disclosure of PHI even in the context of judicial and administrative proceedings. 45 C.F.R. §163.512(e). The Texas Protective Order ensured the security of this sensitive patient information. Accordingly, United did not have to take the additional extraordinary steps of redacting the protected information from the data consistent with HIPAA. *See* Zambrano Decl. at ¶¶6-10. In contrast, the current Protective Order in this action does not track these requirements. Disclosing such data, without the benefits of

the Texas Protective Order, would necessarily require that United breach the safeguards afforded to patients' sensitive health information.²

3. Given the steps necessary to compile and review the data compliance would be overly burdensome.

To comply with the subpoena and HIPAA rules United would also have to undertake a tremendous effort to remove PHI from the data, as well as review the data for potential privileged information. Reviewing this data would be a nearly insurmountable burden, particularly in light of the lack of relevance of the data in this unrelated action. NTSP responds that compliance with its request would not be overly burdensome because the data requested was limited to a small number of counties and the data has already been gathered. This is incorrect for a number of reasons discussed below.

The data United produced to the Texas Attorney General did not include provider location, as specified in the Written Notice and subsequent negotiations. Cook Decl. at ¶5. Thus, to limit the request to the thirteen counties for which NTSP seeks information would involve an extensive programming effort. United employees would have to write programs to extract data based on provider zip codes, run the programs, and review it to ensure that the results were accurate. *Id.* Not only is it estimated that such an effort would take weeks to produce, but it would divert United's computers from normal

² Furthermore, Texas Insurance Code §843.007 also limits the disclosure of information relating to the diagnosis, treatment, or health of a health plan's enrollees or applicants. Similarly, Texas Insurance Code §843.102 provides that an enrollee's records are confidential and privileged and not subject to public information law or to subpoena. These sections of the Insurance Code place an affirmative obligation on United to maintain the confidentiality of information provided by its enrollees. The current Protective Order does not take these provisions into account.

business operations. In short, such an undertaking would disrupt and hinder United's normal course of operations. *Id.*

Moreover, NTSP's arguments that it was only requesting the Texas Attorney General data because it would be easy to produce is undercut by the fact that in Specification No. 3, it originally requested documents beyond the time period of the Written Notice. Thus, while the Written Notice covered documents from January 1, 2001 and March 28, 2002 (and in certain cases only up to February 2002), the NTSP's subpoena asks for documents through June 30, 2002. Exhibit 1, Specification No. 3. Additionally, United's did not supply documents for the entire time period specified in the Written Notice. Cook Decl. at ¶4. Not only would it take months to collect data for a different time period, but since United's contract was not effective until 2002 it is even more difficult to see how the data is relevant.

The presence of PHI information in the data also makes this request especially burdensome. Indeed, if United is forced to produce this data it will have to review and potentially redact all of this information, given statutory privacy concerns. Zambrano Decl. at ¶¶4-12. This will be a time consuming and expensive effort. United should not, as a third party, be forced to take such steps when the data being sought is not relevant to the subject matter in this action.

In short, the time and effort United would have to expend to cull, review, and if possible redact, the data NTSP requests threatens to interrupt its business operations. Cook Decl. at ¶¶5-7. The benefit to NTSP of obtaining irrelevant data does not outweigh this burden. Therefore, United requests that the Court quash these Specifications in their entirety.

B. The Subpoena Should be Limited to the Extent Specification No. 7 Asks for Irrelevant, Burdensome, and Duplicative Information.

Specification No. 7 of NTSP's Subpoena asks for "all documents concerning or relating to comparisons of the cost of physician services, hospital care, pharmacy cost, or cost of health insurance in the State of Texas." Exhibit 1. United objects to this request to the extent that it relates to information that is irrelevant to the allegations in the FTC Complaint, overbroad, and unduly burdensome. To begin, it is difficult to define the exact scope of NTSP's request, even after conversations with counsel for NTSP. For example, it is unclear what costs NTSP is referring to -- the costs born by United or those born by consumers. It is also unclear what the exact meaning of the words "concerning or relating to comparisons" is. Therefore, it is impossible to determine whether documents which outline formulas used to run the comparisons would be responsive in the sense that they concern or relate to the comparisons. If they do, complying with this request would require an enormous amount of work to identify, produce, and review these documents, thereby tying up United's staff and slowing down its regular business operations.

In addition, documents concerning or relating to comparisons of pharmacy or health insurance costs are not related to the current proceedings which stem from claims related to price fixing and concerted refusals to deal on the part of physician providers. Therefore this request is beyond the proper scope of a subpoena. NTSP has tried to argue that the materials it requests are relevant because they could be used to show efficiencies. However this argument is a non-starter. For example, decreases in hospital costs could be purposely offset by higher fees for services just as easily as they

could be the result of increased efficiencies. The fact that the data can be interpreted in a myriad of ways demonstrates its lack of relevancy. Finally, to the extent that the request asks for comparisons of physician costs it is duplicative of information produced in response to Specification 5. Thus, United asks that this request be quashed in its entirety or at least limited to the documents comparing physician costs encompassed by Specification 5.

C. The Deposition Notice Should Be Limited to the Same Extent as the Subpoena.

NTSP has also requested deposition testimony related to the document requests made in its Subpoena. United has designated two corporate representatives, Mr. Thomas Quirk and Dr. David Ellis, to speak on these topics. However, like the Subpoena requests, many of the Deposition Notice requests ask for information that is irrelevant. Thus, to the extent United, NTSP, and the Court limit the requests made in the Subpoena, United asks that the Court also limit the topics of examination in the Deposition Notice. For example, NTSP should not be allowed to question either deponent about the data submitted to the Texas Attorney General. Nor should it be able to ask questions related to comparisons of pharmacy, hospital care, or health insurance costs or about comparisons and rates established for the entire state of Texas.

II. GENERAL OBJECTIONS TO NTSP'S REQUESTS

United also asserts a number of objections to NTSP's Definitions and Instructions in the Subpoena and Deposition Notice.

First, United requests that this Court limit the requests to United HealthCare of Texas, Inc. United should not have to respond to this request on behalf of

its “parents, subsidiaries, affiliates” or its “predecessors or successors.” Exhibit 1, Exhibit 2. United’s affiliates are located across the country and its parent company is located in Minnesota. Moreover, United was in existence in Texas during the time frame cited in NTSP’s Subpoena and Deposition Notice; thus there is no reason to refer to its “predecessors or successors.”

Second, United objects to NTSP’s requirement that it produce a detailed Privilege Log containing information on all documents withheld from the production on that basis, because this is a very heavy burden to place on a non-party who is trying to comply with a request at an expedited pace. Further, United requests that the Court provide it with a forty-five (45) day period to create and submit a log that adequately describes the materials withheld.

III. NTSP SHOULD BEAR THE COSTS OF UNITED’S RESPONSE TO THE SUBPOENA

Even if this Court does limit the scope of the Subpoena to the extent requested, the burden on United to respond is still substantial. The Federal Rules of Civil Procedure allow a non-party to recover expenses when a subpoena imposes expenses on that party. Fed. R. Civ. P. 45. Therefore, United asks that the Court require that NTSP reimburse United for all the costs, expenses, and fees it incurs.

CONCLUSION

For the foregoing reasons, United respectfully requests an Order in the attached form, quashing or limiting NTSP's Subpoena and Deposition Notice.

Dated: January 23 2004

Respectfully submitted,



George J. Hazel, Esq.

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Counsel for Non-Party Movant
United HealthCare of Texas, Inc.

CERTIFICATE OF SERVICE

I, George J. Hazel, hereby certify that the foregoing document has been served on January 23, 2004 by hand – delivery on the following:

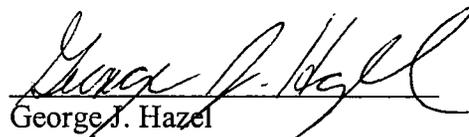
Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room H-104
600 Pennsylvania Avenue, NW
Washington, DC 20580

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

and by certified overnight mail and facsimile on the following:

Michael Bloom
Senior Counsel to the Northeast Region
Federal Trade Commission
One Bowling Green, Suite 318
New York, NY 10004

Gregory S.C. Huffman
Gregory D. Binns
Thompson & Knight, LLP
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201


George J. Hazel



UnitedHealth Group

MN008-T202
9900 Bren Road East
Minnetonka MN 55343

FAX COVER SHEET

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Date: December 22, 2003
12:19 PM

To: Greg Coleman

Fax Number: 512 527 0798

Number of Pages: 62
(including cover sheet)

From: Jackie Albright

Phone Number: 952 936 1905

Fax Number: 952 936 1745

Re:

Message:

If you do not receive all pages or there are pages which cannot be read, please call Matt Johnson at 952-936-7334.



CT System

Service of Process Transmittal Form
Dallas, Texas

12/19/2003

Via Federal Express (2nd Day)

TO: Jaquelyn E Albright MN008-T202
 UnitedHealth Group Incorporated (111504190770700600)
 MN008-T202
 UnitedHealth Group Center
 9900 Bren Road East
 Minnetonka, MN 55343

Phone: (952) 936-1906 ex:
 FAX: (952) 936-1745

RE: **PROCESS SERVED IN TEXAS**

FOR **UNITED HEALTHCARE OF TEXAS, INC. Domestic State: Tx**
 True Name : United HealthCare of Texas, Inc. (643006723770700800)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

1. TITLE OF ACTION: To: Untied Healthcare of Texas, Inc. Re: North Texas Specialty Physicians
2. DOCUMENT(S) SERVED: Cover Letter dated: Dec 18, 2003, Subpoena, Attachments, Appendix A
3. COURT: None Shown
Case Number 9312
4. NATURE OF ACTION: Subpoena seeking any and all records or items pertaining to documents sent to the Federal Trade Commission concerning your business relationships with healthcare providers in the State of Texas
5. ON WHOM PROCESS WAS SERVED: CT Corporation System, Dallas, Texas
6. DATE AND HOUR OF SERVICE: By Certified mail on 12/19/2003 with Postmarked Date 12/18/2003
7. APPEARANCE OR ANSWER DUE: Jan 2, 2004
8. ATTORNEY(S): Thompson & Knight LLP
1700 Pacific Ave
Suite 3300
Dallas, Tx 75201
9. REMARKS:

SIGNED CT Corporation System
 PER Angela L. Kraft - Mays /BC
 ADDRESS 350 North St. Paul Street
 Dallas, TX 75201
 SOP WS 0005937735

Information contained on this transmittal form is recorded for CT Corporation System's record keeping purposes only and to permit quick reference for the recipient. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information that can be obtained from the documents themselves. The recipient is responsible for interpreting the documents and for taking the appropriate action.

12/22/03 MON 13:19 [TX/RX NO 6518]

THOMPSON & KNIGHT LLP

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AUSTIN
 DALLAS
 FORT WORTH
 HOUSTON
 ALGIERS
 MONTERREY
 PARIS
 RIO DE JANEIRO

December 18, 2003

VIA CERTIFIED MAIL NO. 7003 1680 0004 2583 8960

United Healthcare of Texas, Inc.
 c/o C T Corporation System, Registered Agent
 350 N. St. Paul Street
 Dallas, TX 75201

Re: North Texas Specialty Physicians, Docket No. 9312

To Whom it May Concern:

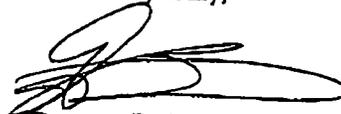
Enclosed please find a subpoena *duces tecum* for the above-captioned case, requiring you to submit documents responsive to the attached specifications, on or before January 2, 2004. These documents should be sent to:

Gregory S. C. Huffman
 Thompson & Knight, LLP
 1700 Pacific Avenue, Suite 3300
 Dallas, TX 75201

Also enclosed is a copy of the Protective Order Governing Discovery Material ("Protective Order"). The Protective Order governs the documents submitted by parties and third parties to the litigation and lays out the submitters' rights and protections. Your submission should conform to the procedures specified in the Protective Order.

I am happy to answer any questions you have regarding the specifications of the subpoena *duces tecum* or the Protective Order. I can be reached at the telephone number above.

Yours very truly,



Gregory D. Binns

GDB/dep

Enclosure

007155 000034 DALLAS 1680758.1



SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO

United Healthcare of Texas, Inc.
c/o C T Corporation System,
Registered Agent
350 N. St. Paul Street
Dallas, TX 75201

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION

Gregory S. C. Huffman
Thompson & Knight LLP
1700 Pacific Ave., Suite 3300
Dallas, TX 75201

4. MATERIAL WILL BE PRODUCED TO

Gregory S. C. Huffman

5. DATE AND TIME OF PRODUCTION OR INSPECTION

January 2, 2004

6. SUBJECT OF PROCEEDING

In the Matter of North Texas Specialty Physicians, Docket No. 9312

7. MATERIAL TO BE PRODUCED

See Attached

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell

Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Gregory S. C. Huffman
Thompson & Knight LLP
1700 Pacific Ave., Suite 3300
Dallas, TX 75201

DATE ISSUED

NOV 24 2003

SECRETARY'S SIGNATURE

Donald S. Clark

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

SUBPOENA DUCES TECUM TO UNITED HEALTHCARE OF TEXAS, INC.
IN RE NORTH TEXAS SPECIALTY PHYSICIANS
DOCKET NO. 9312

DEFINITIONS AND INSTRUCTIONS

- A. The terms "document" and "documents" are used in their customary broad sense and include, without being limited to, writings, drawing, graphs, charts, handwritten notes, film, photographs, audio and video recordings and any such representations stored on a computer, a computer disk, CD-ROM, magnetic or electronic tape, or any other means of electronic storage, and other data compilations from which information can be obtained in machine-readable form (translated, if necessary, into reasonably usable form). See 16 C.F.R. § 3.34(b).
- B. "NTSP" refers to Respondent North Texas Specialty Physicians, its employees, representatives, attorneys, agents, participating physicians, directors, officers, and consultants.
- C. "United Healthcare of Texas, Inc.," "you," or "your" refers to United Healthcare of Texas, Inc., its parents, subsidiaries, affiliates, employees, agents, and representatives.
- D. "Physician provider" shall mean a physician, entity comprised of physicians, or entity contracting on behalf of physicians and/or entities comprised of physicians.
- E. Unless otherwise indicated, the time period for which documents should be produced is January 1, 1998 through the present.
- F. The singular includes the plural and vice versa; the terms "and" and "or" shall be both conjunctive and disjunctive; and the past tense includes the present tense and vice versa.
- G. Documents should be produced both in hard copy and electronic form where available.
- H. Each document and thing produced pursuant to this subpoena *duces tecum* shall be produced as it is kept in the usual course of business (for example, in the file folder or binder in which such documents were located when the subpoena *duces tecum* was served) or shall be organized and labeled to correspond to the categories in this subpoena *duces tecum*.
- I. If you withhold material responsive to this subpoena *duces tecum* pursuant to a claim of privilege, or another similar claim, you shall submit, together with such claim, a schedule of the items withheld which states individually as to each such item the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged. See 16 C.F.R. § 3.38A(a).
- J. Responsive documents shall be sent to: Gregory S. C. Huffman, Thompson & Knight L.L.P., 1700 Pacific Ave., Suite 3300, Dallas, Texas 75201.

SUBPOENA DUCES TECUM TO UNITED HEALTHCARE OF TEXAS, INC.
IN RE NORTH TEXAS SPECIALTY PHYSICIANS
DOCKET NO. 9312

- K. You are encouraged to confer with counsel for NTSP to work out any potential problems so as to avoid unnecessary delay and burden.

DUCES TECUM

1. All documents previously produced or otherwise sent to the Federal Trade Commission concerning your business relationships with healthcare providers in the State of Texas.
2. All documents previously produced or otherwise sent to the Office of the Attorney General of the State of Texas concerning business relationships with healthcare providers in the State of Texas, including specifically but without limitation the documents provided in response to the Written Notice of Intent to Inspect, Examine and Copy Corporate Documents served in or about March 2002 (a sample of such Writren Notice is attached hereto as Appendix A). [At your option, check registers as described in Class 6 of Exhibit C need not be produced]. Such documents should be provided in electronic form only.
3. Documents for the time period January 1, 2000 to June 30, 2002 described in Exhibits A through C of the above-referenced Written Notice of Intent to Inspect, Examine and Copy Corporate Documents to the extent such documents are not produced in response to Request No. 2 above. [At your option, check registers as described in Class 6 of Exhibit C need not be produced]. Such documents should be provided in electronic form only.
4. All internal and external correspondence, memoranda, and messages concerning or relating to NTSP.
5. All documents comparing the cost or quality of medical service provided by any physician provider listed on Appendix B and any other physician providers.
6. Documents sufficient to show the rate (as expressed in terms of a % of RBRVS or otherwise) paid to each physician provider by you, the period for which that rate was paid, whether the rate was for a risk or non-risk contract, whether the rate was for a HMO or PPO or other contract, who the contracting parties were for the contract setting the rate, and which physicians were covered by such contract.
7. All documents concerning or relating to comparisons of the cost of physician services, hospital care, pharmacy cost, or cost of health insurance in the State of Texas.
8. Documents sufficient to show your policies, rules, and access standards establishing the geographic areas to be serviced by physician providers in the State of Texas.
9. A sample contract used for each contracting entity involving more than 75 physicians in the Counties of Dallas and/or Tarrant and any amendments, revisions, or replacements thereof.

SUBPOENA DUCES TECUM TO UNITED HEALTHCARE OF TEXAS, INC.
IN RE NORTH TEXAS SPECIALTY PHYSICIANS
DOCKET NO. 9312

Certificate of Service

I, Gregory D. Binns, hereby certify on December 18th, 2003, I caused a copy of the attached subpoena *duces tecum* to be served upon the following by certified mail:

Mr. Michael Bloom
Senior Counsel to the Northeast Region
Federal Trade Commission
One Bowling Green, Suite 318
New York NY 10004

United Healthcare of Texas, Inc.
c/o C T Corporation System (Registered Agent)
350 N. St. Paul Street
Dallas, TX 75201



Gregory D. Binns

007155 000034 DALLAS 1680571.1

007155 000034 DALLAS 1678455.1

-3-

12/22/03 MON 13:19 [TX/RX NO 6518]

APPENDIX A



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS
JOHN CORNYN

March 29, 2002

Attention Corporate Officers and Agents
United Healthcare of Texas, Inc.
CT Corporation System
350 North St. Paul Street
Dallas, TX 75201

VIA Certified Mail #7001 2510 0007 0331 9113

Re: Written Notice of Intent to Inspect, Examine and Copy Corporate Documents
pursuant to Art. 1302-5.02 of the Texas Miscellaneous Corporation Laws Act.
Health Maintenance Organization Documents

Attention Corporate Officers and Agents of United Healthcare of Texas, Inc.:

Please be advised that the Texas Attorney General has authorized and directed that the Consumer Protection Division (hereafter, "CPD") inspect, examine and review certain books, records and other documents related to United Healthcare of Texas, Inc.'s (hereafter, "United") Texas Health Maintenance Organization (hereafter, "HMO") business pursuant to the Texas Miscellaneous Corporation Laws Act, TEX. REV. CIV. STAT. ANN. ART. 1302-5.01 - Art. 1302-5.06. Therefore, CPD requests that United produce the books, records and other documents as specified in the attached Exhibits A, B and C within the next thirty days. If United chooses to cooperate with this request, these documents should be produced to Assistant Attorney General Robert C. Robinson, III, Consumer Protection Division, 300 West 15th Street, Suite 900, Austin, Texas 78701.

As an alternative to producing the electronic file copies of the requested documents according to the terms specified in the attached Exhibits A, B and C, please notify CPD of the dates United will make its electronic databases and systems that contain the requested electronic data accessible to CPD for inspection, examination and copying at United's offices. If United chooses this option, such electronic databases and systems shall be made available for inspection, examination and copying beginning no later than April 29, 2002, and continuing until such inspection, examination and copying is complete. Upon arrival at United's offices, the Attorney General's assistants and representatives shall present United with a letter confirming that each is authorized to conduct the inspection, examination and copying of United's books, records and other documents.

The documents specified in the attached Exhibits A, B and C are requested as part of the Attorney General's investigation of possible violations of Section 17.46(a) of the Deceptive Trade Practices Act and Section 3 of the Unfair Competition and Unfair Practices Act, Texas Insurance Code, Article 21.21. The documents as specified in the attached Exhibits A, B and C may show or tend to show that United has been or is engaged in acts or conduct in violation of its charter rights and privileges, or in violation of the laws of this State.

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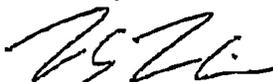
CPD shall return all documents, and all copies of documents, produced by United pursuant to this inspection and examination prior to closing this investigation. In the meantime, it is CPD's position that such documents are not subject to production pursuant to an open records request as provided by Art. 1302-5.04 of the Texas Miscellaneous Corporation Laws Act. CPD is not requesting confidential patient information.

If it is easier to do so, the documents responsive to this request to inspect, examine, and copy documents may be produced in coordination with the documents to be produced in response to the separate request issued today for records related to United's PPO business in Texas.

Please be advised that any corporation that fails or refuses to permit the Attorney General or his authorized assistants or representatives to examine or to take copies of any of its said books, records or other documents pursuant to the Texas Miscellaneous Corporation Laws Act, "shall thereby forfeit its right to do business in this State; and its permit or charter shall be canceled or forfeited." Art. 1302-5.05.A. Additionally, any officer or agent of a corporation who fails or refuses to permit the Attorney General or his authorized assistants or representatives to examine or to take copies of any of its books, records or other documents pursuant to the Texas Miscellaneous Corporation Laws Act, "shall be fined not less than one hundred dollars nor more than one thousand dollars, and be imprisoned in jail not less than thirty nor more than one hundred days. Each day of such failure or refusal is a separate offense." Art. 1302-5.05.B.

Should you have any questions regarding production of the requested documents according to the terms specified in the attached Exhibits A, B and C, or any interest in discussing this matter further, please contact me at (512) 475-4360, or by fax at (512) 322-0578. CPD is confident that United shares the Attorney General's interest and desire to resolve these allegations of improper payment practices, and we look forward to United's cooperation in this endeavor.

Yours truly,



Robert C. Robinson, III
Assistant Attorney General
Consumer Protection Division

c: Ms. Deb Goldstein and Mr. Greg Coleman
WEIL, GOTSHAL & MANGES L.L.P.
Via Facsimile: (214) 746-7777 and (512) 391-6879

HMO DOCUMENT EXAMINATION, EXHIBIT A
DEFINITIONS

1. "Company," "you," "your," "your company," and "United" mean each entity to which this Examination is addressed; its parent; and its merged, consolidated, or acquired predecessors, divisions, subsidiaries, and/or affiliates. These terms include any and all directors, officers, equity owners, representatives, employees, agents, attorneys, successors, and assigns of United. The terms also include all natural persons and entities acting or purporting to act for the above, and any predecessor, successor, affiliate, subsidiary or wholly owned or controlled entity. The phrase will be construed to include present and former officers, agents, employees, directors, representatives, consultants, attorneys, associates and all other persons acting or purporting to act for you, and any predecessor, successor, affiliate, or subsidiary entity or person(s), including all present and former officers, agents, employees and all other persons exercising or purporting to exercise discretion, to make policy, or to make decisions.
2. Without limiting the term, a document is deemed to be within your "control" if you have ownership, possession, or custody of the document, or superior right to secure the document or copy of it from any person or public or private entity having physical possession of it.
3. "Any" means all.
4. "Claim" means any health care provider's request for payment for emergency, medical or other health care services, supplies or equipment furnished to an individual patient recipient. For the purposes of the six classes of electronic document claim records requested by Exhibit C, a single claim may have multiple suffixes and claim lines, and each claim line will have multiple fields.
5. "CMS" means Centers for Medicare and Medicaid Services.
6. "Code" means any code, edit and/or modifier used to specify, to sequence or otherwise to describe the services for which the provider is submitting a claim.
7. "Correct Coding Initiative," "CCI" and "NCCI" mean the CMS National Correct Coding Initiative system for codes, edits and modifiers that is utilized nationally by all Medicare carriers in the claims processing systems those Medicare carriers use to determine payments to providers. CMS developed CCI to promote national correct coding methodologies and to control improper coding leading to inappropriate payment in Medicare Part B claims. CMS developed its CCI coding policies based on coding conventions such as those defined in the American Medical Association's (hereafter, "AMA") Current Procedural Terminology ("CPT") manual, national and local policies and edits, coding guidelines developed by national societies, analysis of standard medical and surgical practices and a review of current coding practices.
8. "CPT" code or "CPT code" means any Current Procedural Technology code as defined and licensed by the AMA.

9. "Database" - In addition to its common meaning, the term "database" shall include the terms "data bank" and shall mean and refer to any structured collection of electronic information organized into records or rows, together with all other electronic data whose presence is needed to analyze and view the information in a full and meaningful way. This Examination requests electronic data documentation from your databases and/or data banks that contain information about any and all claims by any health care provider that provides services to your members with all codes and/or programming instructions and other materials necessary to understand and use such electronic data documentation.
10. "Document" means and includes all written, printed, recorded and graphic matter, regardless of authorship, both originals and nonidentical copies, in your possession, custody or control, or known by you to exist, despite whether the writing was intended for or transmitted internally by you, or intended for or transmitted to any other person or entity. It includes communications in words, symbols, pictures, photographs, sounds, films and tapes, and information stored in or accessible through computer or other information storage and retrieval systems, with all codes and/or programming instructions and other materials necessary to understand and use such systems.
11. "Examination" means this Written Notice of Intent (and Request) to Inspect, Examine and Copy Corporate Documents as issued at the direction of the Attorney General pursuant to Art. 1302-5.02 of the Texas Miscellaneous Corporation Laws Act.
12. "HCPCS" means the Health Care Finance Administration (CMS) Common Procedure Coding System for all providers and medical suppliers to code professional services, procedures and supplies for Medicare.
13. "Health Care Provider" includes any "physician" as that term is defined by TEX. INS. CODE Art. 20A.02(r) and also includes any "provider" as that term is defined by TEX. INS. CODE Art. 20A.02(t) as amended by Act of 1997, 75th Leg., ch. 1026, Sec. 3.
14. "ICD-9-CM" and "ICD9" code(s) means any International Classification of Diseases-9th revision-Clinical Modification codes used to classify morbidity and mortality information as such codes are approved by the American Hospital Association ("AHA"), CMS and the National Center for Health Care Statistics.
15. "Industry Standard Code(s)" include any and all codes, code edits, modifiers or coding methods as such codes and coding methods are specifically defined, required and/or used for claim submission compliance with the NCCI. Terms and definitions applicable to the NCCI standards may be found at www.hcfa/medlearn/ncci.html. For coding methods not required by CCI or HCPCS, the term "industry standard code(s)" includes, but is not limited to, any and all CPT codes as licensed by the AMA, any and all ICD-9-CM codes as revised and approved by the AHA, CMS, and the National Center for Health Care Statistics.
16. "Member" includes any patient as the term patient is defined at TEX. INS. CODE Art. 21.58A, Section 2(16) (West 2002).

17. "PC Compatible" means an American Standard Code for Information Interchange (hereafter, "ASCII") text file that can be read by a personal computer. Data in each PC compatible file should be fixed width .
18. "Provider" for purposes of this Examination shall have the same meaning as "Health Care Provider" unless otherwise specified.
19. "Relates to," "relating to," "regarding," and "connected to" mean and include any and all information that in any manner or form is relevant in any way to the subject matter in question, including without limitation all information that, directly or indirectly, contains, records, reflects, summarizes, evaluates, refers to, indicates, comments on, or discusses the subject matter, or that in any manner states the background of, or was the basis or were the bases for, or that record, evaluate, comment on, relate to or were referred to, relied on, utilized, generated, transmitted or received in arriving at your conclusion(s), opinion(s), estimate(s), position(s), decision(s), belief(s) or assertion(s) concerning the subject matter in question.
20. "Service(s)" means any emergency, medical or other health care services, procedures, supplies or equipment for which United receives a claim for payment from a health care provider.

HMO DOCUMENT EXAMINATION, EXHIBIT B
INSTRUCTIONS

- A. Unless otherwise stated, the scope of this Examination relates to all specified books, data documents and records existing or created at any time during the period from January 1, 2000, to March 28, 2002, related to United's Texas HMO business.
- B. The electronic data document files requested in Exhibit C should be produced in PC Compatible format. Each file should be an ASCII text file that can be read by a personal computer. Data in each file should be fixed width. A sample demonstrating how the requested electronic files shall appear when printed in table format is attached as Exhibit D.
- C. Any failure to provide document(s) is not acceptable if you can obtain the document(s) from persons reasonably available to you or under your control.
- D. In any situation in which it is not clear in which capacity you are responding, you are to designate all relevant capacities.
- E. It is your responsibility to clearly designate which, if any, of the documents contain trade secrets according to § 17.61(f) of the TEX. BUS. & COM. CODE.
- F. Documents produced shall be complete and not redacted, submitted as originally prepared or as found in your files. You may submit legible copies instead of original documents.
- G. Documents should be numbered consecutively and marked with a United or personal identification and a unique consecutive control number.
- H. All documents and/or other data compilations that relate to the subject matter of this Examination shall be preserved and any ongoing process of document destruction involving such documents and/or data compilations should cease.
- I. Documents responsive to this Examination shall be produced according to the instructions and definitions outlined in Exhibit A, Exhibit B and Exhibit C.
- J. This Examination does not request data for Medicare plans. However, the meaning of each term used within Exhibits A, B, and C is to be defined and interpreted consistent with that term's definition as used by CMS, HCPCS and the NCCI. If you believe there is a direct contradiction between the meaning specifically given to a term within Exhibit A, B or C and the meaning given to that term as the term is used by CMS and the NCCI, please notify CPD of such belief and proceed with the understanding that the definition within Exhibit A, B, and C shall control.
- K. If United uses a broader definition of any term(s) defined or used within this Examination, please provide a written copy of the broader definition of such term(s).

- L. If United does not have the requested information for a specific field of any particular individual record stored within any database, and/or United does not otherwise have access to the requested information for any specific field of the given record, please leave the field blank to indicate that United does not have access to the requested information for the specific field of the particular record produced.
- M. As used herein, the words "and" and "or" should be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request any answer, response or document that might be deemed outside its scope by another construction.
- N. All currency amounts requested for electronic data document data elements (fields) should be represented as dollars and cents with a plus or minus sign to indicate positive or negative amounts. The plus or minus sign should be the first character in the currency field. Currency amounts should be presented with the next eight digits for dollars and the last two for cents (without a decimal point).
- O. All dates for electronic data document data elements (fields) should be mmddyyyy format without spaces, "_", or "/".
- P. All text for electronic data document data elements (fields) should be left justified without leading spaces.
- Q. Place of service, type of service, CPT codes, and ICD9 codes should be industry standard codes. If industry standard codes are not used (e.g., if there is no applicable industry standard code as the term industry code is defined in Exhibit A), or if the codes used include any variations from industry standard codes, an electronic file containing any and all applicable lookup tables and/or data dictionaries should be provided. The electronic file containing the lookup table(s) and/or data dictionary(ies) shall include each non-industry standard code, each variation from an industry standard code and a description of each. The layout of the lookup table(s) and/or data dictionary(ies) should also be provided in the electronic data file. As with all electronic file copies requested by this Examination, this electronic file should be PC Compatible. Each file should be an ASCII text file that can be read by a personal computer. Data in the electronic data file should be fixed width delimited. The electronic data file produced in response to this Instruction Q should be labeled as responsive to Instruction Q.

HMO DOCUMENT EXAMINATION, EXHIBIT C
Electronic Data Documents

CPD requests the six classes of electronic data documents as follows:

- Class 1 Eligibility**
- Class 2 Authorizations/Referrals**
- Class 3 Claims/Encounters**
- Class 4 Capitation**
- Class 5 Adjudication Rules**
- Class 6 Check Register**

HMO DOCUMENT EXAMINATION, EXHIBIT C**Specific Electronic Data Document Class 1
Eligibility**

To assure that United understands the data elements requested regarding Document Class 1, specific instructions and definitions for production of Class 1 documents are detailed below.

Two electronic data document files are requested for each of the 26 (twenty-six) months specified within Class 1 below. For each of the 26 (twenty-six) months, please provide one electronic data file showing eligibility information for each person who was a United member during that month as such information was available to the provider, from United, during that month the service was provided, and one electronic data file showing eligibility for each person who was a United member during that month as eligibility for that month exists with all retroactive additions, deletions and other adjustments incorporated as of March 28, 2002.

Please provide the two separate files for each month showing all members eligible during that month. Please label the 52 separate eligibility files as shown below.

1) Eligibility information as it was available to the provider, from United, during that month. Example: jan2000.txt will contain eligibility information, as it was available to the provider in January of 2000 for members to whom the provider furnished services in January 2000.

Jan2000.txt	Jan2001.txt	Jan2002.txt
Feb2000.txt	Feb2001.txt	Feb2002.txt
Mar2000.txt	Mar2001.txt	
Apr2000.txt	Apr2001.txt	
May2000.txt	May2001.txt	
Jun2000.txt	Jun2001.txt	
Jul2000.txt	Jul2001.txt	
Aug2000.txt	Aug2001.txt	
Sep2000.txt	Sep2001.txt	
Oct2000.txt	Oct2001.txt	
Nov2000.txt	Nov2001.txt	
Dec2000.txt	Dec2001.txt	

2) Eligibility with all retroactive additions, deletions and other adjustments as of March 28, 2002.

Jan2000a.txt	Jan2001a.txt	Jan2002a.txt
Feb2000a.txt	Feb2001a.txt	Feb2002a.txt
Mar2000a.txt	Mar2001a.txt	
Apr2000a.txt	Apr2001a.txt	
May2000a.txt	May2001a.txt	
Jun2000a.txt	Jun2001a.txt	
Jul2000a.txt	Jul2001a.txt	
Aug2000a.txt	Aug2001a.txt	
Sep2000a.txt	Sep2001a.txt	
Oct2000a.txt	Oct2001a.txt	
Nov2000a.txt	Nov2001a.txt	
Dec2000a.txt	Dec2001a.txt	

The following Electronic Data Elements (Fields) are requested for each of the 52 Class 1 Electronic Data Document Files described above:

<u>Name</u>	<u>Description</u>	<u>Data Type</u>	<u>Length</u>
Month	Month eligibility is for	Text	8 (mmddyyyy)
Mbr_id	Member ID	Text	25
Mbr_Age	Member Age on first day of month	Text	4
Mbr_Sex	Member Sex (M, F, U)	Text	2
Mbr_DOB	Member Date of Birth	Text	8 (mmddyyyy)
PCP_last	Primary Care Physician Last Name	Text	25
PCP_first	Primary Care Physician First Name	Text	25
PCP_ID	Primary Care Physician ID	Text	25
CapIPA_ID	ID for IPA/GROUP paid by capitation	Text	25
IPAName	IPA OR GROUP Name	Text	25
Tot_premium	Total Premium	Text	11
PCP_Percent	PCP Percent of Premium	Text	11
Specialist_Percent	Specialist Percent of Premium	Text	11
Facility_percent	Facility percent of Premium	Text	11
Pharmacy_percent	Pharmacy Percent of Premium	Text	11
PCP_adjmbr	PCP adjusted member count	Text	11
Specialist_adjmbr	Specialist adjusted member count	Text	11
Facility_adjmbr	Facility adjusted member count	Text	11
Pharm_adjmbr	Pharmacy adjusted member count	Text	11
Product		Text	25
Plan		Text	25
LOB	Line of Business	Text	25
Benefit	Benefit Set	Text	25
Employer_ID	Employer ID	Text	25
Employer_name	Employer Name	Text	25

HMO DOCUMENT EXAMINATION, EXHIBIT C
Specific Electronic Data Document Class 2
Authorizations/Referrals

To assure that United understands the data elements requested regarding Class 2 Electronic Data Documents, below are specific additional instructions and definitions for production of Class 2 documents.

Authorization Number is the number assigned to any authorization.
Referral Number is the number assigned to any referral.
Provider ID is the United identification number for the provider approved to perform service.
Member ID is the United identification number for the member.
Requested by is the name of the physician requesting the authorization number.
Number of visits authorized is the number of visits approved of as part of the authorization.
Authorization for describes the type of service authorized.
Authorized from date is the first date for which the authorization is valid.
Authorized to date is the last date for which the authorization is valid.
Comments documented comments associated with an authorization.

Please provide one file for each month showing authorizations created during that month.
Please provide 26 separate authorization files labeled as shown below.

Jan00auth.txt	Jan01auth.txt	Jan02auth.txt
Feb00auth.txt	Feb01auth.txt	Feb02auth.txt
Mar00auth.txt	Mar01auth.txt	
Apr00auth.txt	Apr01auth.txt	
May00auth.txt	May01auth.txt	
Jun00auth.txt	Jun01auth.txt	
Jul00auth.txt	Jul01auth.txt	
Aug00auth.txt	Aug01auth.txt	
Sep00auth.txt	Sep01auth.txt	
Oct00auth.txt	Oct01auth.txt	
Nov00auth.txt	Nov01auth.txt	
Dec00auth.txt	Dec01auth.txt	

Each field provided in each Class 2 record should correspond to the authorization number for that record.

The following Electronic Data Elements (Fields) are requested for each record of the 26 Class 2 Electronic Data Document Files described above:

<u>Name</u>	<u>Description</u>	<u>Data Type</u>	<u>Length</u>
Authorization_Nbr	Authorization Number	Text	25
Referral_Nbr	Referral Number	Text	25
Provider_id	Provider Identification Number	Text	25
Member_id	Member Identification Number	Text	25
Requested_by	Requested by	Text	25
Authorization_for	Services approved	Text	255
Visits	Number of visits	Text	3
From_date	First date authorization valid	Text	8 (mmdd/yyyy)
To_date	Last date authorization valid	Text	8 (mmdd/yyyy)
Comments	Comments	Text	1024

HMO DOCUMENT EXAMINATION. EXHIBIT C**Specific Electronic Data Document Class 3
Claims/Encounters**

To assure that United understands the data elements requested in Electronic Data Document Class 3, below are specific instructions and definitions for production of Class 3 documents.

For purposes of this Electronic Data Document Class 3, the term *claim* means *submitted claims and encounters*.

It is CPD's understanding that disposition of submitted claims or encounters is dependent upon a number of factors including member eligibility, authorization, covered benefits, co-pay, deductible, co-insurance, applicable fee schedule and provider contracts. A single claim or encounter may have to be re-processed multiple times if errors are made during processing. Each time a claim or encounter is re-processed a new suffix number is assigned to the claim.

Document Class 3 includes both paid and denied claims. There should be one document file for each month showing each claim and each encounter entered during that month. Each of the Class 3 electronic document files should include all encounter information entered that month on each claim and each encounter paid via a capitation contract or delegated claims payment.

Example: Jan00claim.txt should include all claims entered in January 2000 regardless of the date of service or the date paid.

There should be 26 separate Class 3 claims/encounters document files labeled as follows:

Jan00claim.txt	Jan01claim.txt	Jan02claim.txt
Feb00claim.txt	Feb01claim.txt	Feb02claim.txt
Mar00claim.txt	Mar01claim.txt	
Apr00claim.txt	Apr01claim.txt	
May00claim.txt	May01claim.txt	
Jun00claim.txt	Jun01claim.txt	
Jul00claim.txt	Jul01claim.txt	
Aug00claim.txt	Aug01claim.txt	
Sep00claim.txt	Sep01claim.txt	
Oct00claim.txt	Oct01claim.txt	
Nov00claim.txt	Nov01claim.txt	
Dec00claim.txt	Dec01claim.txt	

Each field provided in each Class 3 record should correlate to the claim number, line number and claim suffix for that record.

Below are definitions of data elements (fields) to be included in Class 3 Electronic Data Document Files.

The *claim number* is used like an invoice number to track a provider's request for payment.

If a provider performs multiple services for the same patient on the same day, each service is given a separate *claim line number*. Each time a claim or encounter is re-processed a new *claim suffix number* is assigned to the claim. The Class 3 electronic data files should include each *claim suffix number* assigned to the claim.

The health plan assigns a unique number to each member (covered life), the *Member ID*. This number is usually comprised of a subscriber number for the primary insured and a two-digit extension for the family member.

Member Date of Birth is the date when the covered life was born.

Member Age is the age of the member on the date of service.

Employer ID is a unique number assigned by United to identify each United employer contract.

Employer Name is assigned by United to identify the United employer contract.

PCP ID is the unique identification number assigned by United for the Primary Care Physician. A single physician may have multiple ID numbers corresponding to locations, contracts and tax IDs.

PCP Name is the full name of the Primary Care Physician.

PCP Specialty is the Specialty of the Primary Care Physician (General Practice, Family Practice, Internal Medicine, OBGYN).

Place of Service is the industry standard CMS code noting the place where service was performed.

Type of Service is the industry standard CMS code indicating the type of service performed.

Date Admitted is the first day of service for procedures performed over multiple days. (e.g., inpatient stays, observation and rehabilitation).

Date Discharged is the last day of service for procedures performed over multiple days. (e.g., inpatient stays, observation and rehabilitation).

Discharge Status is the patient condition at the point of discharge from an inpatient stay.

ICD91 is the first level code assigned by the physician indicating the patient's diagnosis and/or co-morbid conditions.

ICD92 is the second level code assigned by the physician indicating the patient's diagnosis and/or co-morbid conditions.

ICD93 is the third level code assigned by the physician indicating the patient's diagnosis and/or co-morbid conditions.

ICD94 is the fourth level code assigned by the physician indicating the patient's diagnosis and/or co-morbid conditions.

ICD9 Procedure1 is a code used by some facilities to describe the first multiple procedure performed in conjunction with an inpatient stay.

ICD9 Procedure2 is a code used by some facilities to describe multiple procedures performed in conjunction with an inpatient stay.

ICD9 Procedure3 is a code used by some facilities to describe multiple procedures performed in conjunction with an inpatient stay.

ICD9 Procedure4 is a code used by some facilities to describe multiple procedures performed in conjunction with an inpatient stay.

Modifier 1 is a two-digit code used to describe variations impacting the payment of a CPT or HCPCS code. The modifier is used to indicate that a service or procedure that has been performed has been altered by some specific circumstance, but has not changed in its definition or CPT/HCPCS code.

Modifier 2 is a two-digit code used to describe variations impacting the payment of a CPT/HCPCS code. The modifier is used to indicate that a service or procedure that has been performed has been altered by some specific circumstance, but has not changed in its definition or CPT/HCPCS code.

DRG is a code used to describe procedures performed in conjunction with inpatient care. (Inpatient claims)

RevCode is a code used to describe the revenue codes (e.g., semi-private room) used for inpatient stays. (Inpatient claims)

Quantity is used to indicate multiple prescriptions, tests, injections or procedures.

Unit measure is the unit of measurement applicable to health care services provided in units (e.g., milligrams)

Date Paid is the date claim adjudication was completed.

Date Received is the date the claim was received by United.

Date Entered is the date the claim was entered into the United system.

Check Number is the financial institution issued number on the check supplied to the provider as payment.

Amount Submitted is the amount submitted by the provider as their standard charge for the services provided.

Amount Paid is the amount paid by United to the provider.

Amount Co-pay is the amount paid for the claim by the member(patient) to the provider.

Amount Withhold is the amount that United withholds for possible future payment to the provider if the provider meets given criteria. For contracted providers, this amount should be determined according to the payment terms of United's contract with the provider.

Amount Allowed is the total amount, including co-pays, determined by United as the amount due the provider. For contracted providers, this amount should be determined according to the payment terms of United's contract with the provider.

Capitation Allowed is the total amount, including co-pays, determined by United as the amount United would have paid the provider if the furnished service was paid as a Fee for Service claim. For contracted providers, this amount should be determined according to the payment terms of United's contract with the provider.

Amount Co-insurance is an amount received by a secondary HMO/insurer that reduces the amount due to the provider from the primary HMO/insurer.

Denial Code is a code assigned by United to indicate why a claim was denied.

Denial Message is a description of why the claim was denied.

Cap or PFS indication of whether a claim was paid as a fee for service claim or capitation encounter.

Fee Schedule Amount is the total amount, including co-pays, corresponding to the fee schedule used by United to pay the claim. For contracted providers, this amount should be determined according to the fee schedule and other payment terms of United contract with the provider. This amount should be determined consistent with member benefits and procedures performed on the date of service.

Provider ID is a unique identification number assigned by United to identify a specific provider, provider contract, tax ID number and location.

Provider First Name is the provider's first name.

Provider Last Name is the provider's last name.

Provider UPIN Number is the number assigned to the provider by CMS.

Provider Federal Tax ID is the provider's federal tax identifier number assigned by the IRS.

Provider State License Number is the number assigned to the provider by the state board of medical examiners.

Provider Specialty is the medical specialty of the provider.

Authorization Number is the number assigned to the authorization.

Entity Processing Claim is the name of the company processing the claim, whether United or a company delegated to pay claims on behalf of United.

Per Diem indication as to whether claim payment is either procedure based (e.g., DRG) or per day (per diem) based.

Code Change indication that the code submitted by the provider has been changed and/or the code paid was different than the code submitted.

Re-Bundled Claim indication that a code(s) submitted on the claim has/have been consolidated and paid as a single procedure, or single set of procedures, instead of paid as separate codes as submitted.

The following Data Elements (Fields) are requested for each record of the 26 Class 3 Electronic Data Document Files described above:

<u>Name</u>	<u>Description</u>	<u>Data Type</u>	<u>Length</u>
Claim_number	Claim Number	Text	25
Line	Claim Line Number	Text	25
Suffix	Claim Suffix	Text	25
Member_ID	Member Identification	Text	25
Member_DOB	Member Date of Birth	Text	8(mmddyyyy)
Member_AGE	Member Age on date of claim	Text	3
Member_sex	Member Sex(M,F,U)	Text	2
Provider_ID	Provider ID	Text	25
Provider_First_Name	Provider first name	Text	25
Provider_Last_Name	Provider last name or company name	Text	25
Provider_specialty	Provider Specialty (AMA Code)	Text	25
Place_of_service	Place of Service	Text	25
Type_of_service	Type of Service	Text	25
Date_of_service	Date of Service	Text	8(mmddyyyy)
Date_admitted	Date Admitted	Text	8(mmddyyyy)
Date_discharged	Date Discharged	Text	8(mmddyyyy)
Discharge_status	Discharge Status	Text	25
ICD91	First ICD9 diagnosis	Text	8
ICD92	Second ICD9 diagnosis	Text	8
ICD93	Third ICD9 diagnosis	Text	8
ICD94	Fourth ICD9 diagnosis	Text	8
ICD9_Procedure1	First ICD9 procedure	Text	8
ICD9_Procedure2	Second ICD9 procedure	Text	8
ICD9_Procedure3	Third ICD9 procedure	Text	8
ICD9_Procedure4	Fourth ICD9 procedure	Text	8
CPT	CPT code (submitted)	Text	10
CPT_paid	CPT code (paid)	Text	10
Modifier1	First modifier	Text	2
Modifier2	Second modifier	Text	2
DRG	DRG	Text	25
Revcodes	Revenue Code	Text	5
Quantity	Number of units	Text	5
Unit_measure	Basis unit of measure	Text	25
Authorization_Nbr	Authorization number	Text	25
Date_Paid	Date paid	Text	8(mmddyyyy)
Amount_Submitted	Amount of claim submitted by provider	Text	11
Date_Received	Date claim received by United	Text	8(mmddyyyy)

Date_Entered	Date claim entered by United	Text	8 (nmmddyyyy)
Check_Number	Financial institution issued number of the check that included payment for the claim	Text	25
Amount_ClaimPaid	Amount paid for the claim	Text	11
Amount_Co-pay	Amount co-pay by employee	Text	11
Amount_Withhold	Amount withheld	Text	11
Amount_Deductible	Amount of deductible	Text	11
Amount_Allowed	Amount allowed	Text	11
Amount_Co-ins	Amount paid by secondary carrier	Text	11
Fee_Amount	Fee Schedule amount	Text	25
Denial_code	Code for why claim was denied	Text	255
Denial_message	Description of why claim was denied	Text	25
Product		Text	25
Plan		Text	25
LOB	Line of business	Text	25
Employer_ID	Employer ID	Text	25
Employer	Employer Name	Text	25
PCP_ID	PCP ID	Text	25
PCP_Name	PCP Name	Text	25
PCP_Specialty	PCP Specialty (AMA Code)	Text	10
Provider_UPIN	Provider UPIN number	Text	15
Provider_Tax_ID	Provider federal tax identification	Text	25
Provider_License	Provider Texas license number	Text	25
Entity_processing	Name of Entity that processed claim (e.g. United, name of TPA or delegated entity)	Text	25
Cap_FFS	Is claim paid via capitation or FFS?	Text	4
Code_change	Was/Were code(s) changed between the time of submission and time of claim payment?	Text	2 (Y/N)
Re-Bundled_claim	Was/Were submitted code(s) re-bundled with other claim lines?	Text	2 (Y/N)
Per_Diem	Was claim paid on per diem basis?	Text	2 (Y/N)

HMO DOCUMENT EXAMINATION, EXHIBIT C**Specific Electronic Data Document Class 4
Capitation**

To assure that United understands the data elements requested in Document Class 4, below are specific instructions and descriptions for production of Class 4 documents.

It is CPD's understanding that the detail data and documentation used to calculate the monthly capitation payment to the provider for capitated services should include a record for each member (covered life) covered by the capitation payment; the member age/sex/benefits data; any and all other data used to determine the member count, capitation rate (Per Member Per Month); and the actual amount paid. Although capitation and eligibility are related files, eligibility data seldom matches the capitation data or the capitation check amount because they are run at different times.

Two electronic data document capitation files are required for each of the months specified in Class 4 below; one file showing information as it was available to the provider, from United, during that month, and one file showing information as it exists with all retroactive additions, deletions and adjustments incorporated as of March 28, 2002. Each of the two files for a particular month should contain the same data elements for each record.

There should be two separate files for each month showing each member (covered life) for whom the provider(s) was/were paid capitation for that month. The 52 separate files should be labeled as follows:

1) Capitation as it was available to the provider, from United, during that month.
Example: jan2000cap.txt will contain requested capitation information as it was available to the provider, from United, in January of 2000.

Jan2000cap.txt	Jan2001cap.txt	Jan2002cap.txt
Feb2000cap.txt	Feb2001cap.txt	Feb2002cap.txt
Mar2000cap.txt	Mar2001cap.txt	
Apr2000cap.txt	Apr2001cap.txt	
May2000cap.txt	May2001cap.txt	
Jun2000cap.txt	Jun2001cap.txt	
Jul2000cap.txt	Jul2001cap.txt	
Aug2000cap.txt	Aug2001cap.txt	
Sep2000cap.txt	Sep2001cap.txt	
Oct2000cap.txt	Oct2001cap.txt	
Nov2000cap.txt	Nov2001cap.txt	
Dec2000cap.txt	Dec2001cap.txt	

2) Capitation as it exists with all retroactive adjustments as of March 28, 2002.

Jan2000acap.txt	Jan2001acap.txt	Jan2002acap.txt
Feb2000acap.txt	Feb2001acap.txt	Feb2002acap.txt
Mar2000acap.txt	Mar2001acap.txt	
Apr2000acap.txt	Apr2001acap.txt	
May2000acap.txt	May2001acap.txt	
Jun2000acap.txt	Jun2001acap.txt	
Jul2000acap.txt	Jul2001acap.txt	
Aug2000acap.txt	Aug2001acap.txt	
Sep2000acap.txt	Sep2001acap.txt	
Oct2000acap.txt	Oct2001acap.txt	
Nov2000acap.txt	Nov2001acap.txt	
Dec2000acap.txt	Dec2001acap.txt	

Adjusted count – if the capitation amount is adjusted for age/sex/benefit (hereafter, "ASB"), severity, morbidity, or other factors, please include documentation describing how the adjusted count is determined. Also include an electronic file with any look up tables and/or data dictionaries, or similar information, necessary to calculate adjustment to the count and/or the percent of premium payment. The layout of the look up table(s) and/or data dictionary(ies) should also be provided in the electronic file. As with all electronic files requested, this electronic file should be PC Compatible.

The following Data Elements (Fields) are requested for each record of the 52 Class 4 Electronic Data Document Files described above:

<u>Name</u>	<u>Description</u>	<u>Data Type</u>	<u>Length</u>
Month	Month capitation payment is for	Text	8 (mmddyyyy)
Mbr_ID	Member ID	Text	25
Mbr_Age	Member Age on first day of month	Text	3
Mbr_Sex	Member Sex (M, F, U)	Text	2
Mbr_DOB	Member Date of Birth	Text	8 (mmddyyyy)
PCP_ID	Primary Care Physician ID	Text	25
CapIPA_ID	ID for IPA/GROUP paid by capitation	Text	25
IPAName	IPA OR GROUP Name	Text	25
Adjusted_count	see definition and instructions above	Text	8
Retro_add	Record of member added as retro adjustment	Text	2 (Y/N)
Retro_delete	Record of member deleted as retro adjustment	Text	2 (Y/N)
Cap_CheckNbr	Financial institution issued number of check used to pay capitation to each provider	Text	20
Cap_CheckAmt	Amount of Capitation check for month	Text	11
Cap_Date_Paid	Date Capitation check was issued	Text	8 (mmddyyyy)
Product		Text	25
Plan		Text	25
LOB	Line of Business	Text	25
Benefit	Benefit Set	Text	25
Withhold_amt	Amount withheld	Text	11

HMO DOCUMENT EXAMINATION, EXHIBIT C
Specific Electronic Data Document Class 5
Adjudication Logic

For Electronic Data Document Class 5, produce an electronically formatted, PC compatible electronic file copy of any logic or rules used to value or pay claims in any manner other than a direct lookup of the fee schedule amount corresponding to the procedure on: 1) the submitted claim; 2) the provider contract; and 3) the member plan.

This request includes any and all logic and/or other rules:

1. used to process or pay claims submitted for/with multiple procedures, or assistant surgeon(s), or modifiers; or
2. used to upcode, downcode, bundle, or re-bundle claims; or
3. used to process out of area claims; or
4. used to process out of network claims; or
5. used to process and/or calculate rates and/or discounts applied to payment of any particular claim(s).

HMO DOCUMENT EXAMINATION, EXHIBIT C
Specific Computer Based Document Class 6
Check Register

To assure that United understands the data elements requested in document Class 6, below are specific additional instructions and definitions for production of Class 6 documents.

Class 6 requests the Register record of each check issued to an IPA/Group, or other provider, to pay any and all claim(s) for services. This information includes a list of each claim, covered by each check. If a prior claim is reversed or overpaid, and that reversed or overpaid amount is deducted from a check issued to pay another claim(s), the file should include the number(s) of the "Recoup_ClaimNmbr" for the claim being recouped and the "Recoup_ClaimAmt" deducted as recouppment for that particular prior claim(s).

There should be one file for each month with information for each check issued that month to pay any claim(s) or capitation. Example: Jan00check.txt should include all checks issued in January 2000 regardless of the date of service.

There should be 26 separate check register files labeled as follows:

Jan00check.txt	Jan01check.txt	Jan02check.txt
Feb00check.txt	Feb01check.txt	Feb02check.txt
Mar00check.txt	Mar01check.txt	
Apr00check.txt	Apr01check.txt	
May00check.txt	May01check.txt	
Jun00check.txt	Jun01check.txt	
Jul00check.txt	Jul01check.txt	
Aug00check.txt	Aug01check.txt	
Sep00check.txt	Sep01check.txt	
Oct00check.txt	Oct01check.txt	
Nov00check.txt	Nov01check.txt	
Dec00check.txt	Dec01check.txt	

Each field provided for each Class 6 record should correlate to the check number for that record.

The following Data Elements (Fields) are requested for each record of the 26 Class 6 Electronic Data Document Files described above:

<u>Name</u>	<u>Description</u>	<u>Data Type</u>	<u>Length</u>
Check Number	Financial institution issued number on check	Text	25
Claim_Number	Claim Number	Text	25
Claim_Suffix	Claim Suffix	Text	25
Provider_ID	Provider ID	Text	25
CapIPA_ID	ID for IPA/Group paid by capitation	Text	25
Check_amount	Total amount of check	Text	11
Amount_ClaimPaid	Amount of check applied to the claim number	Text	11
Date Issued	Date check issued	Text	8 (mmddyyyy)
Date Cleared	Date check cleared bank	Text	8 (mmddyyyy)
Cap_Month	Month capitation amount applies to	Text	8 (mmddyyyy)
Recoup_ClaimNbr		Text	25
Recoup_ClaimAmt		Text	11

HMO DOCUMENT EXAMINATION. EXHIBIT D

This sample format indicates how the electronic data files produced for

**Exhibit C
Class 6
Check Register**

should appear if printed out (in table format) from the electronic data file.

APPENDIX B

ABBOTT	LISA	A	MD
ABDUL-RAHIM	SAM		MD
ADAMS	LARRY	E	MD
AGGARWAL	VED	V	MD
AGORO	ADESUBOMI	B	MD
ALBRACHT	JAMISON		DO
ALDERETE	WESLEY	A	MD
ALI	TAHIR	S	MD
ALLEN	GARY	R	MD
ALLEN	VICTOR	L	MD
ALLEN	JAMES	Y	MD
ANAGNOSTIS	GEORGE		MD
ANAGNOSTIS	JIM		MD
ANDERSON	LEE	S	MD
ANDERSON	LEE	E	MD
ANDERSON	ROBERT	G	MD
ANDERSON	THOMAS	C	MD
ANDING	GLORIA	K	MD
ANDING	BRIAN	S	MD
ANDREWS	CHERI	L	DO
ANDREWS	CHARLES	E	MD
ANDREWS, III	CHARLEY	J	MD
ANGLIN	BETH	V	MD
ANTHONY	PHILIP	F	MD
APPLEWHITE	JEFFREY	C	MD
ARMSTRONG	JULIAN	E	MD
ARMSTRONG, JR.	GEORGE	N	MD
ARONSON	STUART	A	MD
ARTIM	RICHARD	A	MD
ATKINS	BARON	C	MD
ATTEBERRY	JAMES	L	MD
AUGUSTAT	EDWIN	C	MD
AXTHELM	DAN	A	MD
BAKER	DONNA	B	MD
BAKER	GEORGE	C	MD
BARBARO	DANIEL	J	MD
BARKER	THOMAS	E	MD
BARRERA	DAVID	N	DO
BARRETT	ROBERT	L	MD
BARRY	JAMES	M	MD
BATES	EDWARD	E	MD
BAYOUTH	JOHN	M	MD
BEALKA, JR.	NEIL	M	MD
BEASLEY, JR.	CLIFTON	H	MD
BECERRA	OSCAR	D	MD
BECHTEL	PHILIP	C	MD
BERENZWEIG	HAROLD	K	MD
BERNHARD	MARK	H	MD
BINDNER	STEPHEN	R	MD
BINZER	THOMAS	C	MD
BIRDWELL	BARBARA	A	MD
BLASI	RALPH	W	MD

BLOEMENDAL	LEE	C	MD
BLUE	SUSAN	K	MD
BOHNSACK	JAMES	R	MD
BONACQUISTI	GARY	A	MD
BORDELON	JAMES	H	MD
BOTHWELL	JAMES	M.	MD
BOX	JAMES	J	MD
BOYD	W.	D	DPM
BRADFORD	LAURA	A	MD
BRADLEY	WILLIAM	T	MD
BRANDENBERG	KARL	B	MD
BREDENBERG	AMY	E	MD
BRENNAN	J.	P	MD
BRIAN	MARY	B	MD
BRISCOE	JOHN	G	MD
BROCK	STEVEN	D	MD
BROOKS	JENNIFER	C	MD
BROOKS	KATHLEEN	L	MD
BROOKS	MICHAEL	E	MD
BROTHERTON	STEPHEN	L	MD
BROWN, JR.	FRANK	E	MD
BRUHL	DAN	E	MD
BRYAN	MICHAEL	D	MD
BUCHANAN	MARTY	J	MD
BUJELL	LISA	M	MD
BUKSH	STEPHEN	R	MD
BURCHARD	JEFFREY	L	MD
BURGE	WALWORTH	E	MD
BURK	JOHN	R	MD
BURKETT	ROBERT	J	MD
BURTON	CARY	L	MD
BUSCHOW	ROBERT	A	MD
BUSSELL	MARK	H	MD
BUSSEY	HELEN	J	MD
BYRD	WILLIAM	B	MD
CADAMBI	AJAI		MD
CANE	MICHAEL	T	MD
CARLTON	CHARLES	A	MD
CARR	CHRISTIAN	L	MD
CASTANEDA	ANTONIO	A.	MD
CASTRO	JAIME	H	MD
CHANDLER	GARY	W	DPM
CHAPMAN	MARC	E	MD
CHENG	JUNG	T	MD
CHILCOAT	RL	G	MD
CHILCOAT	JILL	C	MD
CHILDS, III	TILDEN	L	MD
CHIN	LINCOLN		MD
CHOUDHRY	KARAMAT	U	MD
CHUNDURI	KRISHNABABU		MD
CLIFFORD	SUSAN	G	MD
CLOTHIER	NORMAN	F	MD

COFFEE	CHARLES	C	MD
COLE	JAMES	S	MD
COLEMAN	WILLIAM	G	MD
COLLINS	MARK	F	MD
CONNELLY	KEVIN	G	MD
CONWAY	JOHN	E	MD
CORBETT	DESMOND	B	MD
COWAN	GARY	M	MD
COWAN	TODD	K	MD
COX	CLIFTON	L	MD
CRAWFORD	JOHN	L	MD
CROFFORD	THEODORE	W	MD
CROOK	IRINA	R	MD
CULVER	JENNIFER	L	MD
CUNNINGHAM	HENRY	S	MD
CWIKLA	MARK	J	MD
DAILY	H.	B	MD
DALAL	VINAY		MD
DALTON	MARK	D	MD
DANIEL	PAXTON	H	MD
DAVDA	RAJESH	K	MD
DAVE	KIRAN	J	MD
DAVENPORT	NORMAN	A	MD
DAVID	JAMES	K	MD
DAVIS	PATRICK	L	MD
DAVIS	RANDALL	T	MD
DEARDEN	CRAIG	L	MD
DEAS	THOMAS	M	MD
DEASON	KRISTINA	J	MD
DELA TORRE	FRANK	J	MD
DEMARIE	BRYAN	K	MD
DESAI	MANISH	D	MD
DEWAR	THOMAS	N	MD
DIAS	KERYN	M	MD
DIAZ-ROHENA	ROBERTO		MD
DICKEY	RUSSELL	A	MD
DICKINSON	JOHN	A	MD
DIFFLEY	DAVID	M	MD
DONAHUE	DAVID	J	MD
DONEGAN	KERRY	M	MD
DONOVAN	PATRICK	W	MD
DOORES	STEVEN	A	MD
DUONG	HUY	X	DO
DUSEK	DAVID	A	MD
EATON	JEROME	P	MD
EDEN	BILLY	M	MD
EKADI	KOFOWOROLA		MD
ELBERT	ANNETTE	M	MD
ELDRIDGE	JAMES	K	MD
ELLIS	THOMAS	S	MD
ENGER	MICHAEL	G	MD
EPPSTEIN	ROGER	S	MD

ERWIN	RONNIE	L	MD
EVANS	PHILLIP	T	DO
EVANS	JOHN	P	MD
EVANS	CURTIS	R	MD
EZUKANMA	NOBLE	U	MD
FAIRES	RAYMOND	A	MD
FARLESS	BLAINE	L	MD
FAWCETT	HENRI	D	MD
FAWCETT	MARIA	A	MD
FEWINS	JOHN	L	MD
FIERKE	JAY	L	MD
FIKKERT	CHIMENE	D	DO
FINKE	MARY	A	MD
FISHER	KEITH	D	MD
FITZGERALD	STEPHEN	D	MD
FLOWERS	BRIAN	E	MD
FORD	RICK	J	MD
FORSHAY	R.	L	MD
FRANKEL	MARK	A	MD
FREEMAN	JOHN	W	MD
FROBERG	P. KEVIN		MD
FUSSELMAN	ROBERT	E	MD
GAINES	JOSEPH	H	MD
GALLISHA	NEWTON	C	MD
GARCIA	WILSON	J	MD
GARCIA	CHRIS	L	MD
GARCIA-THOMAS	GABRIELA	I	MD
GARMER	DANNY	J	MD
GATES	T.	G	MD
GAYDOS	MARIA	A	MD
GHAZALI	BASITH		MD
GIBSON-HULL	STACEY	L	MD
GILES	PHILIP	W	MD
GLEASON	R.	R	MD
GLOYNA	ROBERT	E	MD
GLUCK	FRANKLIN		MD
GODBEY	TERESA	E	MD
GONZALES	JAMES	D	MD
GONZALEZ	P. DANIEL		MD
GORDON	JACK	C	MD
GRAHAM	ROBERT	L	MD
GRALINO, JR.	B.	J	MD
GRANAGHAN	RICHARD	T	MD
GRANT	PALL	A	MD
GRANT	KAREN	M	MD
GRAYS	PETER	E	MD
GUINAN	ROBERT	B	MD
GUINN	JOSEPH	E	MD
GULLEDGE, JR.	WILLIAM	R	MD
GIROVA	YELENA	V.	MD
GUTHRIE	WILLIAM	S	MD
GIUTTA	KUMAR		MD

HAFEEZ	ABDUL		MD
HALL	SCOTT		MD
HAMES	ROBERT	B	DO
HAMILTON	KENNETH	W	MD
HAMMONDS	MARK	K	MD
HAMMONS	DOUGLAS	E	MD
HARDEE	STEVE	H	MD
HAROONA	LADI	M	MD
HARRIS	HOWARD	W.	MD
HARVEY	JAMES	M	MD
HAYDEN, JR.	C.	K	MD
HAYS	LOWELL	B.	MD
HEALEY, II	JOHN	J	MD
HELDRIDGE	TOD	C	MD
HENDRICKS	G. DAVID		MD
HIGGS	VETTA	B	MD
HIRT	DARRELL	L	MD
HOFFMAN	ERIC	J	MD
HOLLANDER	IRA	N	MD
HOOKER	GLEN	D	MD
HOOT	WILLIAM	R	MD
HORSTMAN	WILLIAM	G	MD
HOWELL-STAMPLEY	TEMPLE	S	MD
HUBBARD	RICHARD	O	MD
HUDGENS	H. STEPHEN		MD
HUGHENS	H. KENNON		MD
HUNNICUTT	ROBERT	W	MD
HUNTER	DAVID	S	MD
HUTCHESON	RICHARD	M	MD
IGLESIA	KIM	A	MD
INGLE	DONALD	C	MD
ISAACS	EMILY	M	MD
JACKSON	JOHN	S	MD
JAMESON	MICHAEL	D	MD
JANICKI	PETER	T	MD
JARYGA	GREGORY	A	DPM
JEFFERS	JOHN	R	MD
JENNINGS	JERRY	D	MD
JENSEN	RICHARD	A	MD
JOHN	BERCHMANS		MD
JOHNSON	STEVEN	E	MD
JOHNSON	JOHN	W	MD
JOHNSON	FREDERIC	D	MD
JOHNSON	J.	D	MD
JOHNSTON	RICHARD	C.	MD
JOHNSTON	ROBIN	L	MD
JOHNSTON	MARK	A	MD
JOHNSTON	DON	F	MD
JORDAN	DAVID	C	MD
JOYNER	KEVIN	T.	MD
JLTRAS	MICHAEL	A	MD
KALLAM	G.	B	MD

KANE	JEROME		MD
KARING	MICHAEL	V	MD
KELLUM	MICHAEL	W	MD
KENNEDY	MEGAN	J.	MD
KENNEDY	SHANE	W.	MD
KHAN	RUBINA	A	MD
KHAN	SHUJATT	A	MD
KIM	WON	S	MD
KLEUSER	THOMAS	M	MD
KOBETT	PATRICK	T	MD
KORENMAN	MICHAEL	D	MD
KOSTOHRYZ, JR.	GEORGE		MD
KJENSTLER	KEVIN	A	MD
KJENSTLER	KRISTI	M	MD
KUNKEL	KELLY	R	MD
KUO	D.	K	MD
KURUP	SAVITA	R	MD
KUTZLER	DANIEL	E	MD
LABOR	PHILLIPS	K	MD
LABOR	PENNY	M	MD
LAGON	ROBERT	M	MD
LAM	VAN		MD
LAM	JONATHAN	G	MD
LAND	MELISSA	M	MD
LANE	MONA LISA	B	DO
LASTIMOSA	AUGUSTO	C	MD
LAWSON	DAVID	S	MD
LE	LINH	T	MD
LEACH	CHARLES	R	MD
LEAVENS	THOMAS	A	MD
LEDBETTER	JASON	S	MD
LEHMANN	CLAUDIO	S	MD
LESTER	LYNN	A	MD
LEUNG	STEVEN	J	MD
LILLI	ROBERT	H	MD
LIN	JEFFREY	C	MD
LINDSAY	ROBERT		MD
LIU	J.	P	MD
LIVINGSTONE	KEITH	S	MD
LONERGAN	FRANCIS	R	MD
LOPEZ	ANGEL	L	DPM
LORIMER	DOUGLAS	D	MD
LORIMER, III	WISHARD	S	MD
LOVETT	ROBERT	J	MD
LOWRY	WILLIAM	B	MD
LJBRANO	PHILIP	J	MD
LUGGER	JERRY	L	MD
MABERRY	STEPHEN		MD
MACHOS	ROBERT	J	MD
MACIAS	CARLOS	L	MD
MACKEY	STEVEN	J	MD
MADDOX	BARNEY	T	MD

MAIR	KENNETH	A	MD
MALIK	M.	A	MD
MALOFKY	HAROLD		DPM
MANNING	A. BRYANT		MD
MANSEN	JOSEPH	R	MD
MARGO	THEODORE	E	MD
MARLING	CARL	K	MD
MARTIN	JOHN	R	MD
MASTROGIOVANNI	SARAH	K	MD
MATHESON	DONALD	N	MD
MATTHEWS	EDWIN	C	MD
MATTHEWS	JACQUIN	P	MD
MAUK	RICHARD	H	MD
MAUST	JOEL	R	MD
MAXWELL	MICHAEL	C	MD
MCADAMS	CHARLES	G.	MD
MCAULEY, JR.	MICHAEL	F	MD
MCCALLUM	JACK	E	MD
MCCRARY	MICHAEL	W	MD
MCDONALD	CHERYL		MD
MCDONALD	STUART	D	MD
MCDUGALL	PETER	G	MD
MCNEELY	CYNTHIA	R	MD
MCNEFF	JOHN	E	MD
MELTZER	ROBERT	G	MD
MELTZER	VICTOR	N	MD
MERRILL	BERKELEY	S	MD
MEWIS	BETH	A	MD
MEYER	YVES	J	MD
MEYER	BEAU	B	MD
MEYERS	STEVEN	J	MD
MILLER	D. SCOTT		MD
MILLER	JOHN	D	MD
MILNE	JOSEPH	C	MD
MITCHELL	WILLIAM	H	MD
MOFFETT	JEFFREY	D	MD
MOORE	PHILIP	A	MD
MOORE	THOMAS	E	MD
MOORE, III	FRANK	H	MD
MORRILL	AUDREY	C	MD
MORRIS	LAURA	F	MD
MORRISON	MARSHALL	C	MD
MORRISSETTE	DORRIS	A	MD
MORTON	DAN	A	MD
MOSTER	SUSAN	G	MD
MRNJUSTIK	BENNY	R	MD
MURCHISON	ROBERT	J	MD
MURLIGAN	TSR		MD
MUTYALA	SIREESHA		MD
MYERS	KRISS	E	MD
NAMIREDDY	VASANTH	R	MD
NANCE	HENRY	H	DO

NAZARIAN	MANUCHER		MD
NEGRON	ANGEL		MD
NELSON	EDWARD	R	MD
NEMETH	ANDRAS	Z.	MD
NETHERY	DAVID	A	MD
NGUYEN	TRUNG	D	MD
NGUYEN	THUTHUY	T	MD
NGUYEN	HUY	L	MD
NIELSON	KAREN	L	MD
NOELL	COURTNEY	A	MD
NORMAN	JAMES	L	MD
NORVILLE	SCOTT	V.	MD
NUGENT	BARBARA	A.	MD
NUGENT	JOHN	L	MD
NUNEZ	IGNACIO	T	MD
OBINK, JR.	JOHN	W	MD
O'DEA	PATRICK	T	MD
OEI	KWAN	K	MD
OHMAN, JR.	ALLAN	B	MD
OLPSON	JAMES	R	MD
OSHMAN	DANIEL	G	MD
PAFFORD	DICK	A	MD
PALMER	J.	M	MD
PARCHUE	JOHN	A	MD
PARKER	JAMES	F	MD
PARKER	LEIGHTON	B	MD
PARKER	SEAN	G	MD
PARMER	DAVID	E	DDS
PARRILL	ELEN	M	MD
PAVEY	SCOTT	A	MD
PENDER, JR.	JOHN	T	MD
PENNY	RICHARD	E	MD
PERSONS	CHARLES	M	MD
PETERS	THEODORE	T	MD
PETERS	PAT	A	MD
PETTEY	WILLIAM	R	MD
PETTWAY	JOHN	B	MD
PHELPS	DAVID	R	MD
PHILIP	ANNIE	J	MD
PHIPPS	LOWELL	F	MD
PICKELL	STUART	C	MD
PICKERING	RICHARD	S	MD
PICKETT	CREIGHTON	A	MD
PODOLSKY	MICHAEL		DO
POETTCKER	JAMES	D	MD
POLLARD	ROBERT	S	MD
PONDER	JOHN	C	MD
POSNOCK	EUGENE	R	MD
PRESLEY	MARK	B	MD
PROTZMAN	ROBERT	R	MD
PULLIAM	SCOTT	R	MD
PUMPHREY	JOHN	A	MD

PUMPHREY	JOHN	D	MD
PURGASON	JAMES	G	MD
PURGETT	THOMAS	J	MD
PLTEGNAT	BARRY	B	MD
QUERALT	JOHN	A	MD
QUIST	CAROLYN	W.	DO
RAILSBACK	CHARLES	H	MD
RAJAN	BETTY		MD
RAJU	KOSURI	B	MD
RAMAMURTHY	GEETHANJALI		MD
RATHKAMP	QUYNH	K	MD
RAY	JULIE	C	MD
RAZACK	KERIM	F	MD
RAZACK	ABDOOL		MD
RAZI	SALMON	S.	MD
READINGER	JAMES	C	MD
REAM	GENE	P	MD
REAVES	LARRY	E	MD
REDDY	SUCHITA	D	MD
REDFERN	STEPHEN	A	MD
REDROW	MARK	W	MD
REEB, JR.	ROBERT	J	MD
REESE	WILLIAM	G	MD
REICHEL	EDWARD	G	MD
RICHARDS	JOHN	A	MD
RICHARDS	CHERYL	A	DO
RISK	WILLIAM		MD
RIVERA	FRANK	J.	MD
ROBBINS	CYNTHIA	J	MD
ROBERGE	NATALIE	A	MD
ROBINSON	DAVID	J	MD
ROGERS	MICHAEL	L	MD
ROGERS	JAMES	E	MD
ROGERS	ROBERT	J	MD
ROSENTHAL, JR.	HARRY		MD
RUKAB	TRACY	M	MD
RUSH	CHARLES	A	MD
RUSSELL	DAVID	D	MD
RUTHERFORD	STEPHANIE	M.	MD
RUTLEDGE	PETER	L	MD
RUTLEDGE	DAVID	M	MD
RUXER	ROBERT	L	MD
SADIQ	SYED	A.	MD
SAMLOWSKI	EBERHARD	R	MD
SAMUELSON	TODD	E	MD
SANDERS	J.	P	MD
SANDHU	FAHEEM	A.	MD
SANKAR	PONNIAH	S	MD
SARGENT	JAMES	S	MD
SCHMID, JR.	WILLIAM	A	MD
SCHMIDT	ROBERT	H	MD
SCHULTZ	STEVEN	M	MD

SCHUSTER	DENNIS	I	MD
SCHUSTER	RICHARD	D	MD
SCHWARTZ	GREGORY	G	MD
SEGER	WILLIAM		MD
SENER	PALL	R	MD
SEWELL	ROBERT	W	MD
SHAFFER	HOWARD		MD
SHAH	KAVITA	S	MD
SHANK	REBECCA	S	MD
SHARP	REBECA	M	MD
SHASHIKUMAR	KAVITHA		MD
SHEPHERD	RICHARD	L	MD
SHOLDRA	EUGENE	P	MD
SHORE	KENNETH	A	MD
SHORI	SANDEEP	K	DO
SHROPSHIRE	CAMERON	E	MD
SHYN	PAUL	B	MD
SIMMONS	NELSON	X	MD
SINGLETON	STEVEN	B	MD
SKINNER	PHILLIP	H	MD
SKLAR	JOHN	A	MD
SMITH	SPENCER	M	MD
SMITH	WADE	H	MD
SORGEN	STEPHEN	D	MD
SOTMAN	STEVEN	B	MD
SPEAKER	JENNIFER	L	MD
SPRADLEY	LARRY	W	DDS
STANLAND	JOHN		MD
STEWART	CARLYLE	A	MD
STOLTZ	MICHAEL	L	MD
STRANGE, III	LESLIE	C	MD
STRITTMATTER	MARLA	A	MD
STROCK	LOUIS	L	MD
STUNTZ	RICHARD	A	MD
TAFEL	ROBERT	M	MD
TAN	DOMINGO	K	MD
TANNA	RAJENDRA	K	MD
TAUNTON	O. DAVID		MD
TAYLOR	MARK	W	MD
TENG	LI	R	MD
TENG	JAY		MD
TERRY	JAMES	R	MD
THESING	JAMES	E	DO
THOMPSON	GERALD	G	MD
THURMAN	ADDISON	E	MD
THURMOND	JOHN	I	MD
TILKIN	LYNNE	R	DO
TODD	JOE	M	MD
TOLEDO	LUIZ	C	MD
TOMBERLIN	JANICE	K	MD
TONKIN	ALISON	E.	MD
TORRES	MICHELLE		MD

TORRES	LOUIS	A	MD
TRAN	KHANG		MD
TREMBLAY	NORMAND	F	MD
TRIMBLE	MONTY		MD
TRIVEDI	BEENA	M.	MD
TUCKER	CHRISTOPHER	J	MD
TURNER	JAMES	M	MD
USELTON	MICHAEL	T	MD
VAN WYK	WILLIAM	J	MD
VARGAS	LUIS	A	MD
VERMETTE	KENNETH	N	MD
VIA	E. RICK		MD
VIGNESS	RICHARD	M	MD
VIKTORIN	GINA	M	MD
VU	H. JAMES	T	MD
WAGNER	RUSSELL	A	MD
WALKER	JOEL	W	MD
WALLACE	R. PERRY		DO
WALSH	PATRICK		MD
WALTER	MICHAEL	C	MD
WARD	ROBERT	L	MD
WARREN	ROBERT	E	MD
WASSON	BRADLEY	D	DO
WATSON	KETH	C	MD
WATTS	DAVID	C	MD
WATTS	BARRY	K	MD
WEEDEN	STEVEN	H	MD
WELP	MARY		MD
WEST	BRITTON	R	MD
WIGGINTON	STEPHEN	A	MD
WIGHTMAN, JR.	ERNEST	T	MD
WILDER	JAMES	F	MD
WILKINSON	TERRY	L	MD
WILLIAMS	TIMOTHY	E	MD
WILLIAMS	CELESTE	Y	MD
WILLIS	DAN	A	MD
WILSON	DAVID	B	MD
WILSON	RICHARD	D	MD
WILSON	WARREN	D	MD
WINKLER	THOMAS	P	MD
WITTENBERG	JOHN	F	MD
WOLDESENBET	ELLENI		MD
WOLFF	WILLIAM	S	MD
WOOD	JOHN	P	MD
WORSHAM	SIDNEY	A	MD
WRIGHT	BARBARA	A	MD
WROTEN	BOBBY	J	MD
WYNN	SUSAN	R	MD
YAQUINTO	JAMES	J	MD
YOUNG	DAVID	L	MD
ZIMMERMANN	G.	J	MD

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



In the Matter of

North Texas Specialty Physicians,
Respondent.

Docket No. 9312

**PROTECTIVE ORDER
GOVERNING DISCOVERY MATERIAL**

For the purpose of protecting the interests of the parties and third parties in the above captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

DEFINITIONS

1. "Matter" means the matter captioned *In the Matter of North Texas Specialty Physicians*, Docket Number 9312, pending before the Federal Trade Commission, and all subsequent appellate or other review proceedings related thereto.
2. "Commission" or "FTC" means the Federal Trade Commission, or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this Matter.
3. "North Texas Specialty Physicians" means North Texas Specialty Physicians, a non-profit

corporation organized, existing, and doing business under and by virtue of the laws of Texas, with its office principal place of business at 1701 River Run Road, Suite 210, Fort Worth, TX 76107.

4. "Party" means either the FTC or North Texas Specialty Physicians.
5. "Respondent" means North Texas Specialty Physicians.
6. "Outside Counsel" means the law firms that are counsel of record for Respondent in this Matter and their associated attorneys; or other persons regularly employed by such law firms, including legal assistants, clerical staff, and information management personnel and temporary personnel retained by such law firm(s) to perform legal or clerical duties, or to provide logistical litigation support with regard to this Matter; provided that any attorney associated with Outside Counsel shall not be a director, officer or employee of Respondent. The term Outside Counsel does not include persons retained as consultants or experts for the purposes of this Matter.
7. "Producing Party" means a Party or Third Party that produced or intends to produce Confidential Discovery Material to any of the Parties. For purposes of Confidential Discovery Material of a Third Party that either is in the possession, custody or control of the FTC or has been produced by the FTC in this Matter, the Producing Party shall mean the Third Party that originally provided the Confidential Discovery Material to the FTC. The Producing Party shall also mean the FTC for purposes of any document or material prepared by, or on behalf of the FTC.
8. "Third Party" means any natural person, partnership, corporation, association, or other legal entity not named as a party to this Matter and their employees, directors, officers, attorneys

and agents.

9. "Expert/Consultant" means experts or other persons who are retained to assist Complaint Counsel or Respondent's counsel in preparation for trial or to give testimony at trial.

10. "Document" means the complete original or a true, correct and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored or reproduced, including, but not limited to, any writing, letter, envelope, telegraph meeting minute, e-mails, e-mail chains, memorandum, statement, affidavit, declaration, book, record, survey, map, study, handwritten note, working paper, chart, index, tabulation, graph, tariff, tape, data sheet, data processing card, printout, microfilm, index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, desk pad, telephone message slip, note of interview or communication or any other data compilation, including all drafts of all such documents. "Document" also includes every writing, drawing, graph, chart, photograph, phono record, tape, compact disk, video tape, and other data compilations from which information can be obtained, and includes all drafts and all copies of every such writing or record that contain any commentary, notes, or marking whatsoever not appearing on the original.

11. "Discovery Material" includes without limitation deposition testimony, deposition exhibits, interrogatory responses, admissions, affidavits, declarations, documents produced pursuant to compulsory process or voluntarily in lieu thereof, and any other documents or information produced or given to one Party by another Party or by a Third Party in connection with discovery in this Matter.

12. "Confidential Discovery Material" means all Discovery Material that is designated by a Producing Party as confidential and that is covered by Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f), and Commission Rule of Practice § 4.10(a)(2), 16 C.F.R. § 4.10(a)(2); or Section 26(c)(7) of the Federal Rules of Civil Procedure and precedents thereunder. Confidential Discovery Material shall include non-public commercial information, the disclosure of which to Respondent or Third Parties would cause substantial commercial harm or personal embarrassment to the disclosing party. The following is a nonexhaustive list of examples of information that likely will qualify for treatment as Confidential Discovery Material: strategic plans (involving pricing, marketing, research and development, product roadmaps, corporate alliances, or mergers and acquisitions) that have not been fully implemented or revealed to the public; trade secrets; customer-specific evaluations or data (e.g., prices, volumes, or revenues); personnel files and evaluations; information subject to confidentiality or non-disclosure agreements; proprietary technical or engineering information; proprietary financial data or projections; and proprietary consumer, customer or market research or analyses applicable to current or future market conditions, the disclosure of which could reveal Confidential Discovery Material.

TERMS AND CONDITIONS OF PROTECTIVE ORDER

1. Discovery Material, or information derived therefrom, shall be used solely by the Parties for purposes of this Matter, and shall not be used for any other purpose, including without limitation any business or commercial purpose, except that with notice to the Producing Party, a Party may apply to the Administrative Law Judge for approval of the use or disclosure of any Discovery Material, or information derived therefrom, for any other proceeding. Provided,

however, that in the event that the Party seeking to use Discovery Material in any other proceeding is granted leave to do so by the Administrative Law Judge, it will be required to take appropriate steps to preserve the confidentiality of such material. Additionally, in such event, the Commission may only use or disclose Discovery Material as provided by (1) its Rules of Practice, Sections 6(f) and 21 of the Federal Trade Commission Act and any cases so construing them; and (2) any other legal obligation imposed upon the Commission. The Parties, in conducting discovery from Third Parties, shall attach to such discovery requests a copy of this Protective Order and a cover letter that will apprise such Third Parties of their rights hereunder.

2. This paragraph concerns the designation of material as "Confidential" and "Restricted Confidential, Attorney Eyes Only."

(a) Designation of Documents as CONFIDENTIAL - FTC Docket No. 9312.

Discovery Material may be designated as Confidential Discovery Material by Producing Parties by placing on or affixing, in such manner as will not interfere with the legibility thereof, the notation "CONFIDENTIAL - FTC Docket No. 9312" (or other similar notation containing a reference to this Matter) to the first page of a document containing such Confidential Discovery Material, or, by Parties by instructing the court reporter to denote each page of a transcript containing such Confidential Discovery Material as "Confidential." Such designations shall be made within fourteen days from the initial production or deposition and constitute a good-faith representation by counsel for the Party or Third Party making the designations that the document constitutes or contains "Confidential Discovery Material."

(b) Designation of Documents as "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY - FTC Docket No. 9312."

In order to permit Producing Parties to provide additional protection for a limited number of documents that contain highly sensitive commercial information, Producing Parties may designate documents as "Restricted Confidential, Attorney Eyes Only, FTC Docket No. 9312" by placing on or affixing such legend on each page of the document. It is anticipated that documents to be designated Restricted Confidential, Attorney Eyes Only may include certain marketing plans, sales forecasts, business plans, the financial terms of contracts, operating plans, pricing and cost data, price terms, analyses of pricing or competition information, and limited proprietary personnel information; and that this particularly restrictive designation is to be utilized for a limited number of documents. Documents designated Restricted Confidential, Attorney Eyes Only may be disclosed to Outside Counsel, other than an individual attorney related by blood or marriage to a director, officer, or employee or Respondent; Complaint Counsel; and to Experts/Consultants (paragraph 4(c), hereof). Such materials may not be disclosed to Experts/Consultants or to witnesses or deponents at trial or deposition (paragraph 4(d) hereof), except in accordance with subsection (c) of this paragraph 2. In all other respects, Restricted Confidential, Attorney Eyes Only material shall be treated as Confidential Discovery Material and all references in this Protective Order and in the exhibit hereto to Confidential Discovery Material shall include documents designated Restricted Confidential, Attorney Eyes Only.

(c) Disclosure of Restricted Confidential, Attorney Eyes Only Material To Witnesses or Deponents at Trial or Deposition.

If any Party desires to disclose Restricted Confidential, Attorney Eyes Only material to witnesses or deponents at trial or deposition, the disclosing Party shall notify the Producing Party of its desire to disclose such material. Such notice shall identify the specific individual to whom the Restricted Confidential, Attorney Eyes Only material is to be disclosed. Such identification shall include, but not be limited to, the full name and professional address and/or affiliation of the identified individual. The Producing Party may object to the disclosure of the Restricted Confidential, Attorney Eyes Only material within five business days of receiving notice of an intent to disclose the Restricted Confidential, Attorney Eyes Only material to an individual by providing the disclosing Party with a written statement of the reasons for objection. If the Producing Party timely objects, the disclosing Party shall not disclose the Restricted Confidential, Attorney Eyes Only material to the identified individual, absent a written agreement with the Producing Party, order of the Administrative Law Judge or ruling on appeal. The Producing Party lodging an objection and the disclosing Party shall meet and confer in good faith in an attempt to determine the terms of disclosure to the identified individual. If at the end of five business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the disclosing Party may make written application to the Administrative Law Judge as provided by paragraph 6(b) of this Protective Order. If the Producing Party does not object to the disclosure of Restricted Confidential, Attorney Eyes Only material to the identified individual within five business days, the disclosing Party may disclose the Restricted Confidential, Attorney Eyes Only material to the identified individual.

(d) Disputes Concerning Designation or Disclosure of Restricted Confidential, Attorney Eyes Only Material.

Disputes concerning the designation or disclosure of Restricted Confidential, Attorney Eyes Only material shall be resolved in accordance with the provisions of paragraph 6.

(e) No Presumption or Inference.

No presumption or other inference shall be drawn that material designated Restricted Confidential, Attorney Eyes Only is entitled to the protections of this paragraph.

(f) Due Process Savings Clause.

Nothing herein shall be used to argue that a Party's right to attend the trial of, or other proceedings in, this Matter is affected in any way by the designation of material as Restricted Confidential, Attorney Eyes Only.

3. All documents heretofore obtained by the Commission through compulsory process or voluntarily from any Party or Third Party, regardless of whether designated confidential by the Party or Third Party, and transcripts of any investigational hearings, interviews and depositions, that were obtained during the pre-complaint stage of this Matter shall be treated as "Confidential," in accordance with paragraph 2(a) on page five of this Order. Furthermore, Complaint Counsel shall, within five business days of the effective date of this Protective Order, provide a copy of this Order to all Parties or Third Parties from whom the Commission obtained documents during the pre-Complaint investigation and shall notify those Parties and Third Parties that they shall have thirty days from the effective date of this Protective Order to determine whether their materials qualify for the higher protection of Restricted Confidential, Attorney Eyes Only and to so designate such documents.

4. Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to anyone except to:

(a) Complaint Counsel and the Commission, as permitted by the Commission's Rules of Practice;

(b) Outside Counsel, other than an individual attorney related by blood or marriage to a director, officer, or employee of Respondent;

(c) Experts/Consultants (in accordance with paragraph 5 hereto);

(d) witnesses or deponents at trial or deposition;

(e) the Administrative Law Judge and personnel assisting him;

(f) court reporters and deposition transcript reporters;

(g) judges and other court personnel of any court having jurisdiction over any appeal proceedings involving this Matter; and

(h) any author or recipient of the Confidential Discovery Material (as indicated on the face of the document, record or material), and any individual who was in the direct chain of supervision of the author at the time the Confidential Discovery Material was created or received.

5. Confidential Discovery Material, including material designated as "Confidential" and "Restricted Confidential, Attorney Eyes Only," shall not, directly or indirectly, be disclosed or otherwise provided to an Expert/Consultant, unless such Expert/Consultant agrees in writing:

- (a) to maintain such Confidential Discovery Material in locked rooms or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;
- (b) to return such Confidential Discovery Material to Complaint Counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of the Expert/Consultant's assignment or retention or the conclusion of this Matter;
- (c) to not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and
- (d) to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.

6. This paragraph governs the procedures for the following specified disclosures and challenges to designations of confidentiality.

- (a) Challenges to Confidentiality Designations.

If any Party seeks to challenge a Producing Party's designation of material as Confidential Discovery Material or any other restriction contained within this Protective Order, the challenging Party shall notify the Producing Party and all Parties to this action of the challenge to such designation. Such notice shall identify with specificity (i.e., by document control numbers, deposition transcript page and line reference, or other means sufficient to locate easily such materials) the designation being challenged. The Producing Party may preserve its designation

within five business days of receiving notice of the confidentiality challenge by providing the challenging Party and all Parties to this action with a written statement of the reasons for the designation. If the Producing Party timely preserves its rights, the Parties shall continue to treat the challenged material as Confidential Discovery Material, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party, preserving its rights, and the challenging Party shall meet and confer in good faith in an attempt to negotiate changes to any challenged designation. If at the end of five business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the challenging Party may make written application to the Administrative Law Judge as provided by paragraph 6(b) of this Protective Order. If the Producing Party does not preserve its rights within five business days, the challenging Party may alter the designation as contained in the notice. The challenging Party shall notify the Producing Party and the other Parties to this action of any changes in confidentiality designations.

Regardless of confidential designation, copies of published magazine or newspaper articles, excerpts from published books, publicly available tariffs, and public documents filed with the Securities and Exchange Commission or other governmental entity may be used by any Party without reference to the procedures of this subparagraph.

(b) Resolution of Disclosure or Confidentiality Disputes.

If negotiations under subparagraph 6(a) of this Protective Order have failed to resolve the issues, a Party seeking to disclose Confidential Discovery Material or challenging a confidentiality designation or any other restriction contained within this Protective Order may make written

application to the Administrative Law Judge for relief. Such application shall be served on the Producing Party and the other Party, and be accompanied by a certification that the meet and confer obligations of this paragraph have been met, but that good faith negotiations have failed to resolve outstanding issues. The Producing Party and any other Parties shall have five business days to respond to the application. While an application is pending, the Parties shall maintain the pre-application status of the Confidential Discovery Material. Nothing in this Protective Order shall create a presumption or alter the burden of persuading the Administrative Law Judge of the propriety of a requested disclosure or change in designation.

7. Confidential Discovery Material shall not be disclosed to any person described in subparagraphs 4(c) and 4(d) of this Protective Order until such person has executed and transmitted to Respondent's counsel or Complaint Counsel, as the case may be, a declaration or declarations, as applicable, in the form attached hereto as Exhibit "A," which is incorporated herein by reference. Respondent's counsel and Complaint Counsel shall maintain a file of all such declarations for the duration of the litigation. Confidential Discovery Material shall not be copied or reproduced for use in this Matter except to the extent such copying or reproduction is reasonably necessary to the conduct of this Matter, and all such copies or reproductions shall be subject to the terms of this Protective Order. If the duplication process by which copies or reproductions of Confidential Discovery Material are made does not preserve the confidentiality designations that appear on the original documents, all such copies or reproductions shall be stamped "CONFIDENTIAL - FTC Docket No. 9312."

8. The Parties shall not be obligated to challenge the propriety of any designation or

treatment of information as confidential and the failure to do so promptly shall not preclude any subsequent objection to such designation or treatment, or any motion seeking permission to disclose such material to persons not referred to in paragraph 4. If Confidential Discovery Material is produced without the legend attached, such document shall be treated as Confidential from the time the Producing Party advises Complaint Counsel and Respondent's counsel in writing that such material should be so designated and provides all the Parties with an appropriately labeled replacement. The Parties shall return promptly or destroy the unmarked documents.

9. If the FTC: (a) receives a discovery request that may require the disclosure by it of a Third Party's Confidential Discovery Material; or (b) intends to or is required to disclose, voluntarily or involuntarily, a Third Party's Confidential Discovery Material (whether or not such disclosure is in response to a discovery request), the FTC promptly shall notify the Third Party of either receipt of such request or its intention to disclose such material. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Third Party at least five business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Third Party of its rights hereunder.

10. If any person receives a discovery request in another proceeding that may require the disclosure of a Producing Party's Confidential Discovery Material, the subpoena recipient promptly shall notify the Producing Party of receipt of such request. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Producing Part at least five business days before production, and shall include a copy of this Protective Order and a cover letter that

will apprise the Producing Party of its rights hereunder. The Producing Party shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the subpoena recipient or anyone else covered by this Order to challenge or appeal any such order requiring production of Confidential Discovery Material, or to subject itself to any penalties for noncompliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission.

11. This Order governs the disclosure of information during the course of discovery and does not constitute an *in camera* order as provided in Section 3.45 of the Commission's Rules of Practice, 16 C.F.R. § 3.45.

12. Nothing in this Protective Order shall be construed to conflict with the provisions of Sections 6, 10, and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 50, 57b-2, or with Rules 3.22, 3.45 or 4.11(b)-(e), 16 C.F.R. §§ 3.22, 3.45 and 4.11(b)-(e).¹

Any Party or Producing Party may move at any time for *in camera* treatment of any Confidential Discovery Material or any portion of the proceedings in this Matter to the extent necessary for proper disposition of the Matter. An application for *in camera* treatment must meet the standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999) and *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000) and must be supported by a

¹ The right of the Administrative Law Judge, the Commission, and reviewing courts to disclose information afforded *in camera* treatment or Confidential Discovery Material, to the extent necessary for proper disposition of the proceeding, is specifically reserved pursuant to Rule 3.45, 16 C.F.R. § 3.45.

declaration or affidavit by a person qualified to explain the nature of the documents.

13. At the conclusion of this Matter, Respondent's counsel shall return to the Producing Party, or destroy, all originals and copies of documents and all notes, memoranda, or other papers containing Confidential Discovery Material which have not been made part of the public record in this Matter. Complaint Counsel shall dispose of all documents in accordance with Rule 4.12, 16 C.F.R. § 4.12.

14. The provisions of this Protective Order, insofar as they restrict the communication and use of Confidential Discovery Material shall, without written permission of the Producing Party or further order of the Administrative Law Judge hearing this Matter, continue to be binding after the conclusion of this Matter.

15. This Protective Order shall not apply to the disclosure by a Producing Party or its Counsel of such Producing Party's Confidential Discovery Material to such Producing Party's employees, agents, former employees, board members, directors, and officers.

16. The production or disclosure of any Discovery Material made after entry of this Protective Order which a Producing Party claims was inadvertent and should not have been produced or disclosed because of a privilege will not automatically be deemed to be a waiver of any privilege to which the Producing Party would have been entitled had the privileged Discovery Material not inadvertently been produced or disclosed. In the event of such claimed inadvertent production or disclosure, the following procedures shall be followed:

(a) The Producing Party may request the return of any such Discovery

Material within twenty days of discovering that it was inadvertently produced or disclosed (or inadvertently produced or disclosed without redacting the privileged content). A request for the return of any Discovery Material shall identify the specific Discovery Material and the basis for asserting that the specific Discovery Material (or portions thereof) is subject to the attorney-client privilege or the work product doctrine and the date of discovery that there had been an inadvertent production or disclosure.

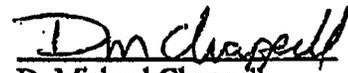
(b) If a Producing Party requests the return, pursuant to this paragraph, of any such Discovery Material from another Party, the Party to whom the request is made shall return immediately to the Producing Party all copies of the Discovery Material within its possession, custody, or control—including all copies in the possession of experts, consultants, or others to whom the Discovery Material was provided—unless the Party asked to return the Discovery Material in good faith reasonably believes that the Discovery Material is not privileged. Such good faith belief shall be based on either (i) a facial review of the Discovery Material, or (ii) the inadequacy of any explanations provided by the Producing Party, and shall not be based on an argument that production or disclosure of the Discovery Material waived any privilege. In the event that only portions of the Discovery Material contain privileged subject matter, the Producing Party shall substitute a redacted version of the Discovery Material at the time of making the request for the return of the requested Discovery Material.

(c) Should the Party contesting the request to return the Discovery Material pursuant to this paragraph decline to return the Discovery Material, the Producing Party seeking return of the Discovery Material may thereafter move for an order compelling the return of the

Discovery Material. In any such motion, the Producing Party shall have the burden of showing that the Discovery Material is privileged and that the production was inadvertent.

17. Entry of the foregoing Protective Order is without prejudice to the right of the Parties or Third Parties to apply for further protective orders or for modification of any provisions of this Protective Order.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Date: October 16, 2003

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

In the Matter of North Texas Specialty Physicians, Respondent.))))))	Docket No. 9312
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**DECLARATION CONCERNING PROTECTIVE
ORDER GOVERNING DISCOVERY MATERIAL**

I, [NAME], hereby declare and certify the following to be true:

1. [Statement of employment]

2. I have read the "Protective Order Governing Discovery Material" ("Protective Order") issued by Administrative Law Judge D. Michael Chappell on October 16, 2003, in connection with the above-captioned matter. I understand the restrictions on my use of any Confidential Discovery Material (as this term is used in the Protective Order) in this action and I agree to abide by the Protective Order.

3. I understand that the restrictions on my use of such Confidential Discovery Material include:

- a. that I will use such Confidential Discovery Material only for the purposes of preparing for this proceeding, and hearing(s) and any appeal of this proceeding and for no other purpose;
- b. that I will not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and
- c. that upon the termination of my participation in this proceeding I will promptly return all Confidential Discovery Material, and all notes, memoranda, or other papers containing Confidential Discovery Material, to Complaint Counsel or Respondent's counsel, as appropriate.

4. I understand that if I am receiving Confidential Discovery Material as an Expert/Consultant, as that term is defined in this Protective Order, the restrictions on my use of Confidential Discovery Material also include the duty and obligation:

- a. to maintain such Confidential Discovery Material in locked room(s) or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;
- b. to return such Confidential Discovery Material to Complaint Counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of my assignment or retention; and
- c. to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.

5. I am fully aware that, pursuant to Section 3.42(h) of the Commission's Rules of Practice, 16 C.F.R. § 3.42(h), my failure to comply with the terms of the Protective Order may constitute contempt of the Commission and may subject me to sanctions imposed by the Commission.

Full Name [Typed or Printed]

Date: _____

Signature



SUBPOENA AD TESTIFICANDUM
 Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

<p>1. TO</p> <p>United Healthcare of Texas, Inc. c/o C T Corporation System, Registered Agent 350 N. St. Paul Street Dallas, Texas 75201 *see attached for topics of examination</p>	<p>2. FROM</p> <p align="center">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	--

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF HEARING</p> <p>Thompson & Knight 1700 Pacific Avenue, Suite 3300 Dallas, Texas 75201-4693</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE Gregory S. C. Huffman or other designated Respondent's Counsel</p>
<p>5. DATE AND TIME OF HEARING OR DEPOSITION January 28, 2004 at 9:00 a.m.</p>	

6. SUBJECT OF PROCEEDING

In the Matter of North Texas Specialty Physicians, Docket No. 9312

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL REQUESTING SUBPOENA Gregory S. C. Huffman Thompson & Knight LLP 1700 Pacific Avenue, Suite 3300 Dallas, Texas 75201</p>
--	--

<p>DATE ISSUED</p> <p>NOV 24 2003</p>	<p>SECRETARY'S SIGNATURE</p> <p align="center"><i>Donald S. Clark</i></p>
--	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

1700 PACIFIC AVENUE • SUITE 3500
DALLAS, TEXAS 75201-4883
(214) 888-1700
FAX (214) 888-1781
www.tklaw.comDIRECT DIAL: 214.969.1372
DIRECT FAX: 214.999.1662
E-MAIL: Gregory.Binns@tklaw.comAUSTIN
DALLAS
FORT WORTH
HOUSTON
ALGIERS
MONTERREY
PARIS
RIO DE JANEIRO

January 12, 2004

VIA HAND DELIVERYUnited Healthcare of Texas, Inc.
c/o C T Corporation System, Registered Agent
350 N. St. Paul Street
Dallas, TX 75201

Re: North Texas Specialty Physicians, Docket No. 9312

To Whom it May Concern:

Enclosed please find a subpoena *ad testificandum* for the above-captioned case, requiring you to designate one or more officers, directors, or managing agents, or other persons who consent to testify on your behalf, to testify regarding the topics of examination attached to the subpoena *ad testificandum*. The persons so designated shall testify to matters known or reasonably available to the organization. See 16 C.F.R. § 3.33(c).

Also enclosed is a copy of the Protective Order Governing Discovery Material ("Protective Order"). The Protective Order governs the discovery material given by parties and third parties in this adjudicative proceeding and lays out your rights and protections.

I am happy to answer any questions you have regarding the topics of examination in the subpoena *ad testificandum* or the Protective Order. I can be reached at the telephone number above.

Yours very truly,



Gregory D. Binns

GDB/dep

Enclosure

007155 000034 DALLAS 1688365.1

JANUARY 12, 2004

PAGE 2

bcc: Karen Van Wagner (w/enclosure)
Gregory Huffman (w/enclosure)
William Katz (w/enclosure)



SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO United Healthcare of Texas, Inc. c/o C T Corporation System, Registered Agent 350 N. St. Paul Street Dallas, Texas 75201 *see attached for topics of examination	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
--	--

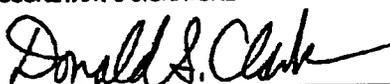
This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING Thompson & Knight 1700 Pacific Avenue, Suite 3300 Dallas, Texas 75201-4693	4. YOUR APPEARANCE WILL BE BEFORE Gregory S. C. Huffman or other designated Respondent's Counsel 5. DATE AND TIME OF HEARING OR DEPOSITION January 28, 2004 at 9:00 a.m.
--	--

6. SUBJECT OF PROCEEDING

In the Matter of North Texas Specialty Physicians, Docket No. 9312

7. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	8. COUNSEL REQUESTING SUBPOENA Gregory S. C. Huffman Thompson & Knight LLP 1700 Pacific Avenue, Suite 3300 Dallas, Texas 75201
---	---

DATE ISSUED JAN 24 2004	SECRETARY'S SIGNATURE 
---------------------------------------	--

GENERAL INSTRUCTIONS

APPEARANCE
 The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH
 The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES
 The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

.....

on the person named herein on:

.....
(Month, day, and year)

.....
(Name of person making service)

.....
(Official title)

Pursuant to 16 C.F.R. § 3.33(c), United Healthcare of Texas, Inc. shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, to testify on the topics of examination listed below. The persons so designated shall testify as to matters know or reasonably available to the organization.

Topics for Examination

1. The negotiation and terms of contracts United Healthcare of Texas, Inc., or any of its parents, subsidiaries, affiliates, predecessors, or successors (hereinafter referred to collectively as "United") has had or attempted to negotiate with North Texas Specialty Physicians and other physician providers located in Collin, Dallas, Denton, Ellis, Grayson, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, all of which are located in the State of Texas.
2. The contractual rates paid by United for medical services provided by physician providers in Texas and any comparisons of those rates conducted by United or others.
3. Comparisons of medical expense (PMPM) for HMO network primary care physicians located in Texas in regard to physician, pharmacy and facility costs.
4. Comparisons of unique-patient-seen costs per physician or of utilization indicators of procedures performed per unique-patient-seen, by physician or by specialty division.
5. The geographic service areas in Texas set by United for physician providers in Texas and how those geographic service areas are determined by United.
6. The topics listed under the designation of Thomas Quirk and Dr. David Ellis on Complaint Counsel's Preliminary Witness List, a copy of which is attached as Exhibit A.
7. Documents, information, and interviews provided by United to the Federal Trade Commission in the last 18 months regarding the investigation of physician groups in North Texas.
8. United's complaints about or criticisms of North Texas Specialty Physicians.

The relevant time period for these topics is January 1, 1997 through the present.

CERTIFICATE OF SERVICE

I, Greg D. Binns, hereby certify that on January 12, 2004, I caused a copy of the foregoing to be served upon the following by e-mail and Federal Express:

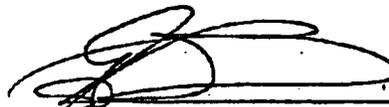
Michael Bloom
Senior Counsel
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

and upon the following via hand delivery

United Healthcare of Texas, Inc.
c/o C T Corporation System, Registered Agent
350 N. St. Paul Street
Dallas, Texas 75201

and by e-mail upon the following: Susan Raitt (srait@ftc.gov), and Jonathan Platt (jplatt@ftc.gov).

Respectfully submitted,



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

THOMPSON & KNIGHT LLP
1700 Pacific Avenue, Suite 3300
Dallas TX 75201-4693
214 969 1700
214 969 1751 - Fax
gregory.huffman@tklaw.com
william.katz@tklaw.com

**ATTORNEYS FOR NORTH TEXAS
SPECIALTY PHYSICIANS**

Exhibit A

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of
NORTH TEXAS SPECIALITY PHYSICIANS,
a corporation.

Docket No. 9312

COMPLAINT COUNSEL'S PRELIMINARY WITNESS LIST

Pursuant to the scheduling order in this matter, Complaint Counsel submits our preliminary witness list. We reserve the right:

- A. to present testimony, by deposition or orally by live witness, from any other person who has been or may be identified by respondents as a potential witness in this matter and any person from whom discovery is sought;
- B. to further supplement this witness list as circumstances may warrant, in accordance with the scheduling order;
- C. to identify rebuttal witnesses as soon as we have had an opportunity to depose the respondent's witnesses (and other company representatives), and once we have received the respondent's expert reports; and
- D. not to call any of the persons listed below to testify at the hearing, as circumstances may warrant.

Subject to these reservations of rights, our preliminary list of witnesses is as follows:

THIRD PARTY WITNESSES**1. Rick Haddock, Blue Cross Blue Shield of Dallas, Texas**

Mr. Haddock is Director for Network Management for Blue Cross Blue Shield of Dallas, Texas ("BCBS"). We expect Mr. Haddock and/or another representative of BCBS to testify about:

- The nature of BCBS.
- Different types of health insurance, including HMO and PPO products.
- North Texas Speciality Physicians ("NTSP") and its participating physicians.
- Physician, hospital, and health plan competition in Tarrant County and adjacent Counties in Texas, as well as other areas.
- Communications and negotiations with NTSP or its participating physicians.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective departicipations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.

2. David Bird and Rick Grizzle of CIGNA Healthcare of Texas, Inc.

David Bird was Associate Vice President of Network Operations and Rick Grizzle is Vice President of Network Development for CIGNA Healthcare of Texas, Inc. ("CIGNA"). We expect them and/or another representative of CIGNA to testify about:

- The nature of CIGNA.
- Different types of health insurance, including HMO and PPO products.
- NTSP and its participating physicians.
- Physician, hospital, and health plan competition in Tarrant County and adjacent Counties in Texas, as well as other areas.
- Communications and negotiations with NTSP or its participating physicians.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.

- NTSP's explicit or implicit refusals to deal or collective de participations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.

3. Thomas Quirk and Dr. David Ellis, United Healthcare of Texas

Thomas Quirk is CEO and President and Dr. Ellis is Medical Director for United Healthcare of Texas ("UHC"). We expect them and/or another representative of UHC to testify about:

- The nature of UHC.
- Different types of health insurance, including HMO and PPO products.
- NTSP and its participating physicians.
- Physician, hospital, and health plan competition in Tarrant County and adjacent Counties in Texas, as well as other areas.
- Communications and negotiations with NTSP or its participating physicians.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective de participations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.

4. Dave Roberts, Dr. Chris Jagmin, and Celina Burns, Aetna, Inc.

Dave Roberts is Senior Network Manager, Dr. Chris Jagmin is Medical Director, Patient Management, and Celina Burns was General Manager for Aetna, Inc. We expect them and/or another representative of Aetna, Inc. to testify about:

- The nature of Aetna, Inc.
- Different types of health insurance, including HMO and PPO products.
- NTSP and its participating physicians.
- Physician, hospital, and health plan competition in Tarrant County and adjacent Counties in Texas, as well as other areas.
- Communications and negotiations with NTSP or its participating physicians.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.

- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective departicipations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.

5. Diane Youngblood, Health Texas Provider Network

Diane Youngblood is Vice President of Network Management for Health Texas Provider Network ("HTPN"). We expect Ms. Youngblood and/or another representative of HTPN to testify about:

- HTPN, which is an IPA.
- NTSP and its participating physicians.
- Communications with NTSP and/or its participating physicians.
- HTPN's affiliation with NTSP and/or its participating physicians and any other agreements between NTSP and HTPN.
- NTSP's explicit or implicit refusals to deal or collective departicipations, or threats to do either.

6. Jim Mosley, Benefits Consultant for Effective Plan Management, Inc.

We expect Mr. Mosley and/or a representative of the City of Fort Worth to testify about:

- Effective Plan Management, Inc., which is a benefits consulting company for the City of Fort Worth.
- Physician, hospital, and health plan competition in Tarrant County, Texas and adjacent Counties.
- The purpose, nature, and affect of Effective Plan Management, Inc.'s and the City of Fort Worth's relationship with payors, third party administrators, brokers, or consultants in Tarrant County and adjacent Counties in Texas, as well as other areas.
- Communications with such entities.
- Criteria used in selecting a plan administrator.
- Discussions concerning contracting with physicians' organizations.
- The price of medical services, including physician services, and the effect of same on the City of Fort Worth.
- Standards used concerning or assessing minimum or desirable physician coverage levels in Tarrant County and adjacent Counties in Texas.
- Geographic access studies performed by or for City of Fort Worth.

- Disruption analyses prepared by or for the City of Fort Worth assessing the effects on employee access to physicians (including specialists) if the City of Fort Worth switched to a different payor provider network.

RESPONDENT

1. Karen Van Wagner

Ms. Van Wagner is the Executive Director NTSP. We expect Ms. Wagner to testify about:

- NTSP and its participating physicians.
- NTSP's physician boards and committees.
- The formation and purpose of NTSP.
- The operations and functions of NTSP.
- The creation and purpose of NTSP's polling instrument.
- The work Ms. Van Wagner performed on NTSP's behalf.
- Different types of health insurance, including HMO and PPO products.
- Physician, hospital, and health plan competition in Tarrant County, Texas and adjacent Counties.
- NTSP's relationship and affiliation with physicians, physician organizations, payors, and employers.
- Communications and negotiations with physicians, physician organizations, payors, and employers.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective departicipations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.
- NTSP's purported efficiencies.
- Contextual and other information relating to NTSP and other documents that may appear on Complaint Counsel's exhibit list.

2. Dr. William Vance, M.D.

Dr. Vance was a founding member of NTSP and serves on its Board of Directors. We expect Dr. Vance to testify about:

- NTSP and its participating physicians.
- NTSP's physician boards and committees.
- The formation and purpose of NTSP.
- The operations and functions of NTSP.
- The creation and purpose of NTSP's polling instrument.
- The work Dr. Vance performed on NTSP's behalf.
- Different types of health insurance, including HMO and PPO products.
- Physician, hospital, and health plan competition in Tarrant County, Texas and adjacent Counties.
- NTSP's relationship and affiliation with physicians, physician organizations, payors, and employers.
- Communications and negotiations with physicians, physician organizations, payors, and employers.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective departicipations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.
- NTSP's purported efficiencies.

3. NTSP

We expect to call other representatives of NTSP to testify about:

- NTSP and its participating physicians.
- NTSP's physician boards and committees.
- The formation and purpose of NTSP.
- The operations and functions of NTSP.
- The creation and purpose of NTSP's polling instrument.
- Different types of health insurance, including HMO and PPO products.
- Physician, hospital, and health plan competition in Tarrant County, Texas and adjacent Counties.
- NTSP's relationship and affiliation with physicians, physician organizations, payors, and employers.
- Communications and negotiations with physicians, physician organizations, payors, and employers.
- The cost of physician services.

- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective departicipations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.
- NTSP's purported efficiencies.

4. **NTSP Participating Physicians and/or their Office Managers**

We expect to call some of NTSP physician members and/or their office managers. We expect them to testify about:

- NTSP and its participating physicians.
- NTSP's physician boards and committees.
- The formation and purpose of NTSP.
- The operations and functions of NTSP.
- The creation and purpose of NTSP's polling instrument.
- Different types of health insurance, including HMO and PPO products.
- Physician, hospital, and health plan competition in Tarrant County, Texas and adjacent Counties.
- NTSP's relationship and affiliation with physicians, physician organizations, payors, and employers.
- Communications and negotiations with physicians, physician organizations, payors, and employers.
- The cost of physician services.
- Physician compensation under the FFS contracts that NTSP negotiated or sought to negotiate.
- Physician compensation under other FFS contracts.
- NTSP's failure to timely messenger or convey to its participating physicians offers that did not provide for compensation acceptable to NTSP.
- NTSP's explicit or implicit refusals to deal or collective departicipations, or threats to do either.
- Utilization review, case management, quality assurance, and credentialing.
- NTSP's purported efficiencies.

Respectfully Submitted,



Susan E. Raitt
Complaint Counsel
Federal Trade Commission
Northeast Regional Office
One Bowling Green, Suite 318
New York, NY 10004

Dated: December 9, 2003

CERTIFICATE OF SERVICE

I, Christine Rose, hereby certify that on December 9, 2003, I caused a copy of the foregoing document to be served upon the following persons:

**Gregory Huffman, Esq.
Thompson & Knight, LLP
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201-4693
Gregory.Huffman@tklaw.com**

**Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room E-104
600 Pennsylvania Avenue NW
Washington, D.C. 20580**

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



**Christine Rose
Honors Paralegal**

5. After leaving two messages for Mr. Binns on January 5, 2004, I spoke with him on January 6, 2004. United specifically objected to the relevancy of Specification Nos. 2 and 3, which are at issue in this motion. In response, Mr. Binns claims that the materials would not be burdensome for United to produce.

6. Counsel for United attempted to reach Mr. Binns to arrange to confer again on January 7; however he did not return the call. On January 8, 2004, counsel for United again called Mr. Binns and arranged to confer with him.

7. On January 9, 2004, I spoke with Mr. Binns about the documents United would begin producing in response to NTSP's request and agreed, with certain limitations, to produce documents responsive to Specification Nos. 1, 4, 6, 7, and 9 on a rolling basis. Specifically, in response to Specification No. 1, United agreed to produce all non-privileged documents sent to the FTC in relation to the FTC's investigation of NTSP, that NTSP did not already have in its possession. To the extent that United would produce additional documents to the FTC, United also agreed to provide those documents to NTSP as well. In addition, we discussed limiting the geographic scope and time frame of NTSP's request. Mr. Binns stated that he would confer with his client about limiting the request to certain counties in the Fort Worth area. United also informed Mr. Binns that it did not have documents responsive to Specification 8. Finally, in regard to Specification No. 3, Mr. Binns agreed to limit the request to data collected between January 1, 2001 and March 28, 2002, the period specified in the Texas Attorney General's Written Notice of Intent to Inspect, Examine, and Copy Corporate Documents ("Written Notice"), as opposed to through June 2002. He also indicated that NTSP might

be open to further limiting Specification No. 2. Mr. Binns notified me that United would be served with a subpoena ad testificandum on January 12, 2004.

8. On the evening of January 9, 2004, United produced documents responsive to Specification Nos. 1 and 9. United again produced responsive documents to NTSP on January 12, 13, and 16 as the parties worked to reach an agreement on the outstanding issues in the Subpoena. Indeed, to date, United has produced thousands of pages of documents.

9. NTSP served United with a subpoena ad testificandum on January 12, 2004. The topics of examination closely relate to the documents requested in NTSP's subpoena duces tecum.

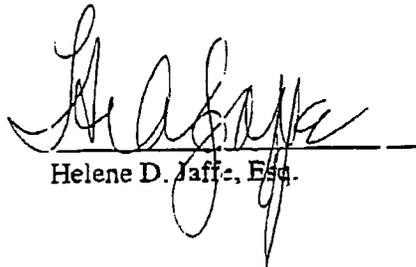
10. After conferring with United, on January 14, 2004, I again tried to schedule a time to speak with Mr. Binns to further narrow the scope of the subpoena duces tecum and discuss the subpoena ad testificandum. Mr. Binns did not return the call. On January 15, 2004, Mr. Binns did speak with Jane Pollack, an associate at my office. During that conversation, Mr. Binns indicated that NTSP would be willing to limit the geographic scope of Specification Nos. 2, 3, and 6 to the counties of Collin, Dallas, Denton, Ellis, Grayson, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant. He also stated that NTSP might be willing to further limit the scope of Specification Nos. 2 and 3 to only the documents requested in response to the Written Notice. However, he said that NTSP was unwilling to limit the Specifications completely. In addition, although Mr. Binns said NTSP would accept the documents United committed to producing in response to Specification No. 5 in response to the request in Specification No. 7 for physician cost comparisons, he still insisted on

compliance with the requests for pharmacy, hospital, and health insurance costs. Finally, Mr. Binns agreed that limitations agreed upon for the subpoena duces tecum would also apply to the subpoena ad testificandum. Tentative dates for the depositions of United's corporate representatives were also set.

11. The morning of January 16, 2004, Mr. Binns again spoke with Ms. Pollack and confirmed that NTSP would limit Specification Nos. 2 and 3 to the data requested in the Written Notice for Collin, Dallas, Denton, Ellis, Grayson, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

12. After leaving a series of messages for Mr. Binns between January 17 and 20, on January 21, 2004, Ms. Pollack again spoke to Mr. Binns. However, they were unable to reach any further agreement on the outstanding issues.

Dated: January 23, 2004



Helene D. Jaffe, Esq.

WEIL, GOTSHAL & MANGES LLP

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January 26, 2004

BY HAND

Clerk
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

**Re: In the Matter of North Texas Specialty
Physicians (Docket No. 9312)**

Dear Clerk:

On January 23, 2004, we filed United HealthCare of Texas, Inc.'s Motion to Quash or Limit NTSP's Subpoena. As noted in the letter accompanying this filing, at the time of the filing we were awaiting the signature for the Declaration of Jennifer Cook, submitted in support of this Motion.

Enclosed please find an executed copy of the Declaration of Jennifer Cook, which is to be inserted as Attachment 4 to the Motion filed on January 23. Please do not hesitate to contact me with any questions.

Sincerely,



Christine P. Hsu

enclosure

for the entire state of Texas. In fact, information regarding reimbursement policies specifically was not part of United's response to the Written Notice.

4. United did not provide all of the data requested in the Written Notice. For example, it did not provide data from the full time period specified in the Written Notice. Therefore, to the extent NTSP asks for data beyond the year 2001, that data will have to be gathered and reviewed. Nor did United provide any capitation data.

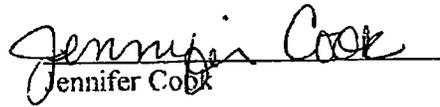
5. Furthermore, the data requested by the Texas Attorney General did not identify providers by location. Thus, for United to pull data specifically for Collin, Dallas, Denton, Ellis, Grayson, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, it will need to write a program to extract the data for specific zip codes, run the program, and then quality check those results. It is estimated that to collect responsive data for Class 3 of the Written Notice will take approximately 100 hours. To collect responsive data for all classes could take months. Not only will this tie up valuable employees, but also it will tie up United's computer systems, thereby disrupting United's ordinary course of business. Indeed, United's original response to the Texas Attorney General was pulled together over the course of approximately four months.

6. The Texas Attorney General's request also involved extensive follow-up work by United. It will be difficult to determine the nature and extent of the follow-up that will be required if United is forced to re-create its data runs for the thirteen counties listed above.

7. The time estimates given above do not factor in the additional time and resources that will be necessary to redact the data requested to comply with the

requirements imposed on United by the Health Insurance Portability and Accountability Act of 1996 as discussed in the Declaration of Luis G. Zambrano (January 23, 2004).

Dated: January 23, 2004


Jennifer Cook

CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing were served this 26th day of
January, 2004 by hand delivery on the following:

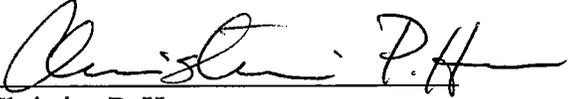
Donald S. Clarke
Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room H-104
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

and by certified overnight mail and facsimile on the following:

Michael Bloom
Senior Counsel to the Northeast Region
Federal Trade Commission
One Bowling Green, Suite 318

Gregory S.C. Huffman
Gregory D. Binns
Thompson & Knight, LLP
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201


Christine P. Hsu

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

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

DECLARATION OF LUIS G. ZAMBRANO

I, Luis G. Zambrano, declare as follows:

1. My name is Luis G. Zambrano. I am over 18 years of age, of sound mind and capable of making this Declaration. The facts stated herein are within my personal knowledge and are true and correct.

2. I am an attorney with the Dallas, Texas office of Weil, Gotshal & Manges, LLP (“WGM”), and am licensed and in good standing with the bar of the State of Texas. WGM represents United, a non-party in the above referenced action, in connection with its responses to the subpoenas duces tecum and ad testificandum served by North Texas Specialty Physicians (“NTSP”).

3. The Health Insurance Portability and Accountability Act of 1996 and the federal regulations relating to the privacy of patient information under 42 C.F.R. part 164 (collectively “HIPAA”) protect certain patient information from disclosure pursuant to a discovery request or a subpoena. Under federal regulation, such protected health information (“PHI”) includes: (a) names; (b) all geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes; (c) all elements of dates (except year) for dates directly related to an individual, including birth date, admission

date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age; (d) telephone numbers; (e) fax numbers; (f) electronic mail addresses; (g) social security numbers; (h) medical record numbers; (i) health plan beneficiary numbers; (j) account numbers; (k) certificate/license numbers; (l) vehicle identifiers and serial numbers, including license plate numbers; (m) device identifiers and serial numbers; (n) web Universal Resource Locators (URLs); (o) internet protocol (IP) address numbers; (p) biometric identifiers, including finger and voice prints; (q) full face photographic images and any comparable images; and (r) any other unique identifying number, characteristic, or code, except as permitted by 42 C.F.R. § 164.512(c).

4. NTSP's subpoena requires that United disclose data containing PHI that was previously transmitted to the Texas Attorney General under the terms of a Protective Order agreed to by United and the Texas Attorney General (the "Texas Protective Order"). The Texas Protective Order required, among other things, that the data remain confidential and protected from disclosure. A true and correct copy of the Texas Protective Order is attached hereto as Exhibit A and incorporated herein by reference.

5. To obtain this data, in order to comply with HIPAA's requirements, NTSP must take certain steps to protect the PHI from disclosure. NTSP has made no efforts to take any of the steps that are required under HIPAA to protect the data, but chooses instead to place the tremendous burden on United to determine how to comply with HIPAA.

6. Without any of the protections for the PHI required under HIPAA for the data produced to the Texas Attorney General, United could be forced to take certain steps, including, but not limited to, redacting or deidentifying the PHI in the data consistent with HIPAA's requirements.

7. If the PHI in the data is redacted, the data will be completely useless, because the records contained in the data corresponding to each patient's claim will not be uniquely identifiable to that patient. Thus, it will not be possible to distinguish one record from another in a meaningful way.

8. If the PHI in the data is deidentified, it is necessary to replace the PHI with a unique number that identifies each record. This will require programming to substitute the PHI with random numbers.

9. In United's claims processing systems, such randomized numbers are generated in United's claims data for each patient or member record and can be used to replace patient-identifying claim information. However, United's other systems relating to preauthorizations, capitation, eligibility, etc. do not use the same randomized numbering system as in United's claims data. Thus, in order for deidentified data from the various systems to be matched correctly for each patient, it is necessary to match the member identification data from each of United's various systems and then substitute a randomly generated number. Without this process of matching the numbers, it will be impossible to connect data for a particular patient. Moreover, it would be impossible to ensure that the same randomly generated and deidentified patient number is consistently applied for all of the data.

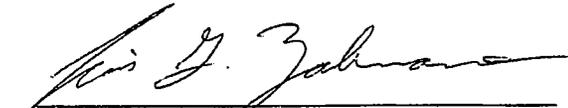
10. The data produced to the Texas Attorney General was produced from various systems that use different types of member or patient identification numbers. Accordingly, if the data produced to the Texas Attorney General is deidentified, it is necessary to follow the process outlined above and match the various member numbers together from each system before the protected health information can be redacted. This process will be expensive

and time consuming because it requires extensive computer resources and technical expertise to perform this matching and deidentifying process.

11. The process outlined above does not take into account any other steps needed to comply with Texas statutes that may also apply to patient information.

12. The additional time and resources necessary to redact protected health information in compliance with HIPAA is above and beyond the time and resource requirements indicated in the Declaration of Jenny Cook (Jan. 23, 2004).

Dated: January 23, 2004



Luis G. Zambrano

Exhibit A

AGREED PROTECTIVE ORDER

The parties to this agreement, the Office of the Attorney General (the Attorney General) and United Healthcare of Texas, Inc., stipulate and agree as follows:

1. The parties agree to comply with all state and federal laws and regulations governing the use and disclosure of any information disclosed to the Office of the Attorney General, by United Healthcare of Texas, Inc., or any affiliated entity or person, pursuant to the investigation referred to in the Attorney General's March 29, 2002 Written Notice of Intent to Inspect, Examine and Copy Corporate Documents ("the investigation"), and detailed in further correspondence.
2. The Attorney General agrees to comply with the requirements of state and federal law contained in Tex. Health & Safety Code § 181.001 to 181.204 and 45 C.F.R. § 164.102 to 45 C.F.R. § 164.532.
3. Specifically, the Attorney General agrees not to use or disclose protected health care information obtained from United Healthcare for any purpose other than the proceeding initiated by the investigation. The Attorney General also agrees to return or destroy all the protected health care information received from United Healthcare, including all copies in any format, at the end of the investigation or any proceeding initiated by the investigation. Additionally, the Attorney General agrees, that prior to any use of the data in any proceeding initiated by the investigation, he will provide United Healthcare ten (10) business days notice. The Attorney General further agrees to comply with any requirements of state and federal law or regulation issued subsequent to the

signature date of this Protective Order to the extent such law or regulation is more restrictive on the protection of protected health care information and patient privacy.

4. "Protected health care information" means individually identifiable health care information in any form or medium, including electronic media. "Individually identifiable health care information" is information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

5. The parties agree to submit this Agreed Protective Order to the Court for approval, and further agree that, pending approval by the Court, this Stipulation and Protective Order shall be effective as if approved and, specifically, that any violation of its terms shall be subject to the same sanctions and penalties as if this Stipulation and Protective Order had been entered by the Court.

6. The Attorney General further agrees that this Stipulation and Protective Order shall be modified to comply with any more restrictive federal or state statutes or

regulations regarding patient privilege and protected health care information issued subsequent to the execution date of this Stipulation and Protective Order if the Attorney General is still in possession of the protected health care information data.

ORDER

Based upon the foregoing agreement, it is so ordered.

Dated: _____

(Judge's Signature)

APPROVED AS TO FORM AND CONTENT:

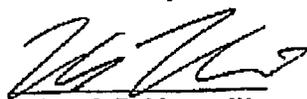
For United Healthcare:



Debra Li Goldstein
Weil, Gotshal & Manges, LLP
100 Crescent Court, Suite 1300
Dallas, TX 75201
214/746-7700
214/746-7777 (fax)

Execution date: 8/12/02

For the Attorney General of the State of Texas:



Robert C. Robinson, III
Consumer Protection Division
P.O. Box 12548
Austin, TX 78711
512/475-4360
512/322-0578 (fax)

Execution date: 08-12-02

WEIL, GOTSHAL & MANGES LLP

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January 26, 2004

BY HAND

Clerk
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

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Physicians (Docket No. 9312)**

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Sincerely,



Christine P. Hsu

enclosure

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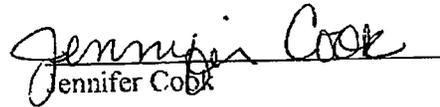
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Dated: January 23, 2004


Jennifer Cook

CERTIFICATE OF SERVICE

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Donald S. Clarke
Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room H-104
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

and by certified overnight mail and facsimile on the following:

Michael Bloom
Senior Counsel to the Northeast Region
Federal Trade Commission
One Bowling Green, Suite 318

Gregory S.C. Huffman
Gregory D. Binns
Thompson & Knight, LLP
1700 Pacific Avenue, Suite 3300
Dallas, TX 75201



Christine P. Hsu