

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



In the Matter of)
)

North Texas Specialty Physicians,)
Respondent.)

) Docket No. 9312
)
)

**ORDER ON COMPLAINT COUNSEL'S MOTION TO COMPEL RESPONSES
TO INTERROGATORIES AND TO RESCHEDULE DEPOSITION**

I.

On January 12, 2004, Complaint Counsel filed a motion for an order compelling compliance with interrogatories or excluding related evidence and for rescheduling one deposition. Respondent North Texas Specialty Physicians ("NTSP") filed its opposition on January 20, 2004.

As set forth below, Complaint Counsel's motion to compel responses to interrogatories is DENIED. As further set forth below, Complaint Counsel's motion to reschedule the deposition of Dr. Van Wagner is GRANTED.

II.

Complaint Counsel's motion to compel responses to interrogatories seeks an order compelling Respondent to respond to twelve interrogatories. Complaint Counsel asserts that "[i]nterrogatories 1 through 8 ask Respondent to identify the documents that tend to indicate the correctness of each of eight assertions that are likely to be made in defense of Respondent's conduct." Motion at 3. Complaint Counsel asserts that Complaint Counsel cannot know which documents Respondent contends support Respondent's defenses unless Respondent tells Complaint Counsel. Complaint Counsel further asserts that its interrogatories are contention interrogatories which should be answered fully. Respondent's arguments in opposition are set forth in the following section.

III.

Interrogatories 1 through 8 ask Respondent to identify specific documents out the documents previously produced in this proceeding which may contain information relevant to contentions raised in Complaint Counsel's interrogatories. Interrogatory 9 seeks information

from a database that has already been produced to Complaint Counsel. Interrogatory 10 seeks the identities of other organizations which Respondent competes with in regard to fee for service contracts. Interrogatory 11 seeks information regarding communications with payors. Interrogatory 12 seeks a listing, by zip codes, of the number of patients who received care from Respondent.

In its objections to these interrogatories, Respondent objected on the grounds that each interrogatory was unduly burdensome and that Complaint Counsel has ample opportunity to determine the answers from the documents that Respondent has produced. In its opposition to the motion, Respondent asserts that it has already produced the documents that contain information sought by the interrogatories and that Respondent cannot sort through the documents to find certain documents containing specific information any more quickly than Complaint Counsel can.

Pursuant to Rule 3.35(c) of the Commission's Rules of Practice:

Where the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. The specification shall include sufficient detail to permit the interrogating party to identify readily the individual documents from which the answer may be ascertained.

16 C.F.R. § 3.35(c).

Respondent has demonstrated that the burden of deriving or ascertaining the answers from the documents produced is substantially the same for Complaint Counsel as it is for Respondent with respect to all 12 of the Interrogatories. In addition, Respondent has provided a response to Interrogatory Number 10. Accordingly, Respondent is not compelled to provide further responses to Complaint Counsel's interrogatories.

Complaint Counsel also asserts that its interrogatories are contention interrogatories, allowed pursuant to Commission Rule 3.35(b)(2) and consistent with the Order issued in this case dated December 4, 2003. The interrogatories that are the subject of the instant motion are not comparable to the interrogatories that were the subject of the December 4, 2003 Order. The interrogatories that were the subject of the December 4, 2003 Order asked Complaint Counsel to provide answers to two specific questions. Complaint Counsel had provided only objections and

no answers to Respondent's interrogatories. By contrast, in the instant motion, Complaint Counsel's interrogatories ask Respondent to identify specific documents from the documents that Respondent has already produced to Complaint Counsel that Respondent contends support certain contentions. Complaint Counsel's interrogatories do not seek information that Complaint Counsel does not already have from the documents or narrow the issues for trial. *See In re Beatrice Foods Co.*, 1979 FTC LEXIS 598, *4 (1979); *In re TK-7 Corp.*, 1990 FTC LEXIS 20, *1-2 (1990).

IV.

For the reasons set forth above, Complaint Counsel's motion to compel responses to interrogatories is DENIED. To the extent that Respondent has information responsive to these interrogatories that has not been produced, such information is subject to exclusion at trial.

V.

Complaint Counsel also seeks an order postponing the deposition of Dr. Van Wagner until ten business days after the entry of an order on Complaint Counsel's motion to compel responses to interrogatories. Complaint Counsel's request is GRANTED. Complaint Counsel shall have ten business days from the issuance of this order to conduct the deposition of Dr. Van Wagner.

ORDERED:


D. Michael Chappell
Administrative Law Judge

January 21, 2004