

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

_____)
In the Matter of)
NORTH TEXAS SPECIALTY PHYSICIANS)
_____)

Docket No. 9312

AFFIDAVIT OF E. PAUL HERRINGTON

STATE OF KENTUCKY §
 §
COUNTY OF JEFFERSON §

BEFORE ME, the undersigned authority, on this day personally appeared E. Paul Herrington being by me duly sworn, deposed and said:

1. “My name is E. Paul Herrington. I am over 21 years of age, of sound mind, have never been convicted of a felony, and am fully competent to make this Affidavit. The facts stated herein are within my personal knowledge and are true and correct.

2. “I am presently employed by Humana Inc., the parent corporation of Humana Health Plan of Texas, Inc. (“Humana”) as Senior Insurance Counsel to provide legal services in Texas. As such, I have been involved with negotiating and providing responses to the Texas Attorney General’s March 28, 2000 Written Notice of Intent to Inspect, Examine and Copy Corporate Documents (“Notice of Intent”) and am familiar with some of Humana’s business practices for maintaining and gathering documents.

3. “In providing this Affidavit, I have reviewed the Subpoena Duces Tecum served on Humana on or about December 22, 2003 (“Subpoena”) by North Texas Specialty Physician (“NTSP”), the Federal Trade Commission’s Complaint in this matter, and the Court’s Protective Order.

Exhibit D

4. “The investigations by the Texas Attorney General were not related to NTSP, and did not concern any alleged anti-trust violations.

5. “Many of the documents described in request Nos. 2 and 3 in the Subpoena have not been generated, gathered or provided to the Texas Attorney General. Therefore, to the extent materials responsive to NTSP’s request Nos. 2 and 3 must be produced, they will first have to be identified, if they exist at all, gathered, and reviewed for privilege, trade secret, and confidentiality and marked in accordance with the Court’s Protective Order.

6. “Humana only agreed to produce documents in response to the Notice of Intent after the Attorney General executed a confidentiality agreement confirming, among other things, the protections in Texas Miscellaneous Corporation Laws Act, Tex. Rev. Civ. Stat. Ann. Art. 1302-5.04, which prohibits the Attorney General, or his authorized assistants or representatives, from making public, or using copies or any information derived in the course of the examination, except in the course of some judicial proceedings in which the State is a party, or in a suit by the State to cancel the permit or forfeit the charter of such domestic or foreign corporation, or to collect penalties for a violation of the laws of this State, or for information of any officer of this State charged with the enforcement of its laws. Attached as Exhibit 1 is a true and correct copy of that confidentiality agreement. Exhibit 1 was negotiated over a period of several months. As a result, Humana has not reviewed any such documents in light of confidentiality, privilege, or trade secrets concerns for disclosure to third parties. Therefore, to the extent materials responsive to NTSP’s request Nos. 2 and 3 must be produced, they must first be completely identified and reviewed for privileged, trade secret and trade sensitive information and marked in accordance with the Court’s Protective Order.

7. “Documents responsive to Classes 3 and 5 of the Notice of Intent include information Humana is prohibited from disclosing because of confidentiality agreements with vendors and licensees.

8. “Virtually all documents responsive to Classes 1-4 in the Notice of Intent contain Protected Health Information as that term is defined in the Health Insurance Portability and Accountability Act of 1996 Privacy and Security Rules.

9. “Documents responsive to request Nos. 2 and 3 would include information about contracts, agreements, or other arrangements with physicians and providers, medical, hospital, and health records of enrollees and records of physicians and providers, and information relating to the diagnosis, treatment, or health of an enrollee or applicant.

10. “Based on Humana’s prior experience with these documents and this data, it is believed that there could be hundreds of thousands of pages of documents and data that exist in either hard copy or electronic format that are potentially responsive to these requests.”

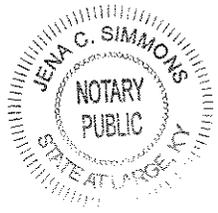
FURTHER, AFFIANT SAYETH NOT.



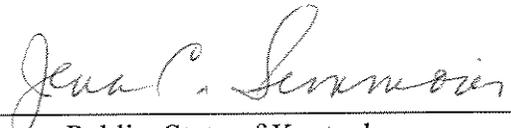
E. PAUL HERRINGTON

SUBSCRIBED AND SWORN TO before me by the said E. PAUL HERRINGTON

on the 9th day of January, 2004.



Jena C. Simmons, Notary Public
State at Large
Kentucky
My Commission Expires Apr. 4, 2007



Notary Public, State of Kentucky
My Commission Expires: 4/4/2007



August 29, 2002

Ms. Penny Hobbs, Attorney for
Corporate Officers and Agents of Humana Insurance Company and
Humana Health Plan of Texas, Inc.
McGinnis, Lochridge and Kilgore, L.L.P.
919 Congress Avenue, Suite 1300
Austin, Texas 78701

Re: Confidentiality Agreement for Humana documents produced pursuant to Written
Notices of Intent to Inspect, Examine and Copy documents

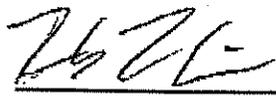
This letter confirms our recent agreements about the confidentiality of documents to be produced by Humana in response to the Attorney General's Written Notice. As evidenced by signature below, Humana and the Texas Attorney General's Office, Consumer Protection Division ("OAG") agree that:

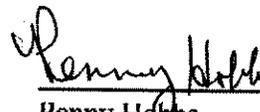
1. By producing documents in response to the Written Notices, Humana does not waive any objections to the Attorney General's authority to conduct these inspections and examinations or to the scope of the Written Notices.
2. Documents produced under this agreement shall be subject to the non disclosure, confidentiality and trade secret protections of The Texas Miscellaneous Corporation Laws Act, Tex. Rev. Civ. Stat. Ann. art 1302-5.04. The Attorney General's Consumer Protection Division agrees that these documents produced subject to Texas Miscellaneous Corporation Laws Act, Tex. Rev. Civ. Stat. Ann. art 1302-5.04, are excepted from public disclosure in response to a request for information made pursuant to the Public Information Act. The Attorney General's Consumer Protection Division will assert this position and exception in response to any public request for or proceeding seeking to discover these documents.
3. Documents produced under this agreement shall be subject to the non disclosure, confidentiality and trade secret protections of Tex. Bus. & Com. Code § 17.61(f). The Attorney General's Consumer Protection Division agrees that these documents produced subject to Tex. Bus. & Com. Code § 17.61(f), are excepted from public disclosure in response to a request for information made pursuant to the Public Information Act. The Attorney General's Consumer Protection Division will assert this position and exception in response to any public request for, or proceeding seeking to discover these documents.
4. The OAG acknowledges that the documents requested and proposed to be produced may include protected health information (as defined in 45 CFR 164.501), medical,

hospital and health records and data otherwise considered confidential and private about Humana's members. OAG represents and warrants that (1) the documents requested are relevant and material to a legitimate law enforcement inquiry; (2) the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) de-identified information could not reasonably be used.

5. Should the OAG receive a request for any documents protected by this agreement, the OAG agrees to promptly notify Humana of the request so that Humana can take appropriate action to assist the OAG in defending against the request and otherwise protect the confidentiality of the documents produced. OAG will return to Humana all documents produced by Humana, along with any copies, once the OAG has concluded its investigation.
6. In the event of litigation between Humana and the OAG arising out of these examinations and inspections, the OAG agrees that any documents covered by this agreement will remain confidential until such time as the parties have had a reasonable opportunity to negotiate and seek the entry of a confidentiality and protective order from the Court.
7. This confidentiality agreement is applicable to any documents (such as written descriptions of available data and correspondence that may contain proprietary information of Humana) produced by Humana pursuant to these examinations and inspections and the subsequent requests related to Humana's compliance with the production option or visitation.
8. This confidentiality agreement is also applicable to communications by the OAG to Humana to the extent that disclosure of unredacted copies of such communications by the OAG would reveal documents produced by Humana in response to these inspections and examinations or reveal any proprietary information of Humana.

AGREED:


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


DATE: August 30, 2002
Penny Hobbs
McGinnis, Lochridge and Kilgore, LLP
Attorneys for Humana