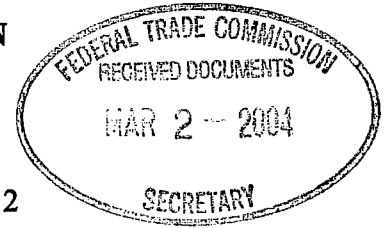


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of
North Texas Specialty Physicians,
a corporation.

Docket No. 9312

NORTH TEXAS SPECIALTY PHYSICIANS'
MOTION FOR SUMMARY DECISION

Respondent North Texas Specialty Physicians ("NTSP") moves for summary decision in this action pursuant to Rule of Practice 3.24. For the reasons set forth in the accompanying memorandum, this motion should be granted and this entire action, brought pursuant to section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, should be dismissed for two separate reasons.

First, to the extent Complaint Counsel asserts that NTSP has been involved in or facilitated collusion among participating physicians, Complaint Counsel's failure to bring forward any evidence of any actual collusive action by physicians legally dooms Complaint Counsel's case, whether on a *per se* or other basis. Indeed, Complaint Counsel's antitrust expert admitted during his deposition that he is unaware of any evidence that any physician has ever colluded with anyone else or has ever refused to entertain any payor offer that was tendered to him or her directly by a payor or through another IPA.

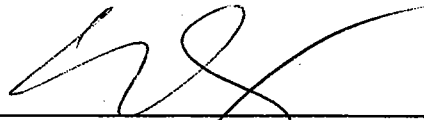
Second, because Complaint Counsel challenges conduct that "might plausibly be thought to have a net procompetitive effect, or possibly no effect at all on competition,"¹ a rule-of-reason analysis must be done. But Complaint Counsel has chosen not to present a rule-of-reason case

¹ *Cal. Dental Ass'n v. FTC*, 526 U.S. 756, 771, 119 S. Ct. 1604, 1613 (1999).

by failing to prove a relevant market — or effect on a relevant market — because Complaint Counsel's economic expert has conceded that he has not defined a relevant market in this case.

FOR THESE REASONS, and those set forth in the accompanying memorandum, NTSP requests that this motion be granted and that this action be dismissed in its entirety. NTSP also requests all other and further relief to which it may be justly entitled.

Respectfully submitted,



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

Thompson & Knight L.L.P.
1700 Pacific Avenue, Suite 3300
Dallas TX 75201-4693
214.969.1700
214.969.1751 - Fax
gregory.huffman@tklaw.com
william.katz@tklaw.com
gregory.binns@tklaw.com

Attorneys for North Texas Specialty
Physicians

CERTIFICATE OF SERVICE

I, Gregory D. Binns, hereby certify that on March 1, 2004, I caused a copy of the foregoing document to be served upon the following persons:


Michael Bloom (via Federal Express and e-mail)
Senior Counsel
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

Barbara Anthony (via certified mail)
Director
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

Hon. D. Michael Chappell (2 copies via Federal Express)
Administrative Law Judge
Federal Trade Commission
Room H-104
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Office of the Secretary (original and 2 copies via Federal Express)
Donald S. Clark
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue NW
Washington, D.C. 20580

and by e-mail upon the following: Theodore Zang (tzang@ftc.gov) and Jonathan Platt (jplatt@ftc.gov).



Gregory D. Binns

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

In the Matter of

North Texas Specialty Physicians,
a corporation.

Docket No. 9312

PROPOSED ORDER ON MOTION FOR SUMMARY DECISION

Came on to be heard Respondent North Texas Specialty Physicians' Motion for Summary Decision and the Administrative Law Judge, having considered the Memorandum in Support of the Motion for Summary Decision, the Separate Statement of Material Facts as to Which There is No Genuine Issue, any responses or replies to the Motion, Memorandum, or Separate Statement, along with any arguments of counsel, hereby **GRANTS** Respondent's Motion.

IT IS THEREFORE ORDERED that Respondent's Motion is granted and all claims against Respondent are hereby dismissed with prejudice.

DATE: _____, 2004

Honorable D. Michael Chappell
Administrative Law Judge

007155 000034 DALLAS 1708311.1

