

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' CONSOLIDATED RESPONSE TO NON-PARTY PAYORS'
MOTIONS FOR *IN CAMERA* TREATMENT OF EXHIBITS**

Respondent North Texas Specialty Physicians (“NTSP”) files this consolidated response to the motions for *in camera* treatment filed by non-party payors Aetna Health Inc. (“Aetna”), Blue Cross Blue Shield of Texas (“Blue Cross”), Cigna, Humana Health Plan of Texas, Inc. (“Humana”), PacifiCare, and United HealthCare of Texas (“United”) (collectively, the “payors”).

On March 16, 2004, NTSP provided all of these non-party payors with notice of its intent to use documents at the hearing that had been produced by the payors. This notice included a list of documents designated as trial exhibits and the final witness lists for both parties in this case. NTSP sought permission from the payors to show the documents marked Restricted Confidential–Attorneys’ Eyes Only only to expert witnesses, employees of the payor itself, and other persons who were shown on the face of the document to have already had access to the document. The payors filed motions with the Administrative Law Judge requesting an order for NTSP to narrow its designations, provide more detailed notice, and extend the payors’ deadline for filing motions for *in camera* treatment to April 12, 2004. Four of the payors objected to NTSP showing documents marked Restricted Confidential–Attorneys’ Eyes Only at the hearing of this matter to the payor’s own employees, experts who have already been permitted access to the

documents during the pretrial phase, and other persons who had received the document if the document so indicated.¹

The Administrative Law Judge found that NTSP's notice was appropriate, but did order NTSP to narrow its designations and also extended the payors' deadline. NTSP then narrowed its designations (eliminating approximately 230 documents),² and provided notice of the new designations to the payors on April 7, 2004.

Blue Cross, which only had eight documents designated, then filed, along with other payors, a motion requesting an order for NTSP to further narrow its designations and to extend again the payors' deadline for filing motions for *in camera* treatment. The other payors either joined or filed parallel motions.³ The Administrative Law Judge denied the payors' request for further narrowing of the exhibits, but did extend the deadline for *in camera* motions to April 16, 2004.

¹ Prior to the hearing of this matter, NTSP will attempt to gain permission from the payors to use Restricted Confidential–Attorneys' Eyes Only documents with experts, employees of the payor that produced the document, and any other persons who had access to the document if the document so indicates. BCBS has provided such permission. Based on the actions of the payors to date, however, NTSP anticipates that it will be necessary to file a motion with the Administrative Law Judge seeking an order allowing NTSP to do so.

² Many of the eliminated documents were duplicates found in the files of another entity which had not designated the document as confidential. The elimination of these duplicate documents may create a problem at trial if a witness balks at testifying about a document not produced from his employer's files, at which time Respondent will seek leave to refer to the duplicate from that witness's employer's files.

³ The payors claimed that the narrowed designation still included duplicates. Although some documents appear to be duplicates at first glance, they are different versions or copies with handwritten notes and similar extra information. For example, Cigna cites Exhibit RX 2819 and Exhibit RX 2909 as duplicates. However, one document is a four-page analysis while the other document contains an additional page of data (Cigna fails to reference all of the pages in the second exhibit in its citation).

The payors have now filed their motions for *in camera* treatment. Although NTSP questions whether the broad range of documents for which the payors seek *in camera* treatment actually meet the standard, NTSP has no evidentiary basis to contest the multitude of documents for which *in camera* treatment is sought.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gregory D. Binns, hereby certify that on April 17, 2004, I caused a copy of the foregoing to be served upon the following persons:

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