

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF  
  
NORTH TEXAS SPECIALTY PHYSICIANS,  
A CORPORATION.

Docket No. 9312

**DECLARATION OF NICOLE L. RITTENHOUSE**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS     §

I, Nicole L. Rittenhouse, do hereby declare and state as follows:

1. I am over the age of eighteen (18) years, am of sound mind, have never been convicted of a felony or a crime involving moral turpitude, and am in all other ways fully competent to make this declaration. I have personal knowledge of the facts set out herein and they are true and correct.

2. I am an Associate at Thompson & Knight L.L.P., and I represent Respondent North Texas Specialty Physicians (“NTSP”). I am admitted to practice law in the State of Texas. I have been admitted to appear before the Federal Trade Commission in this proceeding.

3. I attended a meeting between Complaint Counsel and Respondent’s counsel on April 27, 2004 (the “Meeting”). The Meeting occurred at Thompson & Knight L.L.P.’s Fort Worth office, and the attendees were Ted Zang and Jonathan Platt for Complaint Counsel and Greg Binns, Bill Katz, and myself for NTSP.

4. The purpose of the Meeting was to confer about objections that each side had asserted to some of the other side’s proposed exhibits. The parties wanted to determine if they

could agree on the admission of some exhibits to streamline the pre-hearing conference and avoid having the Administrative Law Judge take the time to rule on evidentiary objections.

4. During the Meeting, the parties also agreed to present the Administrative Law Judge with a joint stipulation that (a) listed certain exhibits to which no objection had been asserted or to which either side had withdrawn their objection, and (b) asked the Administrative Law Judge to admit those listed exhibits into evidence for purposes of the hearing record. The first version of the joint stipulation was marked as JX-2. The parties later prepared JX-3, which amends JX-2, to address a mistake found by NTSP. That mistake has nothing to do with RX 3118-3130 or any issue presented in Complaint Counsel's motion to exclude.

5. Both JX-2 and JX-3 contain one sentence that addresses the reports prepared by each side's expert witnesses. During the Meeting, the parties agreed that the expert reports would be listed on the joint stipulation and would be marked for identification purposes only at that time. The joint stipulation is worded to reflect the parties' agreement and does not say that the parties could not try to admit the reports into evidence at a later time. There was no discussion at the Meeting about the joint stipulation preventing either side from trying to introduce any expert report into evidence at the hearing. I have never participated in any conversation with Complaint Counsel in which it has claimed that the joint stipulation barred either side from trying to admit any expert report into evidence at the hearing. The motion to exclude is the first place that I have seen Complaint Counsel take the position that the joint stipulation prevented NTSP from seeking the admission of any expert report.

6. During the Meeting, Complaint Counsel never said that it objected to the admission of any report prepared by NTSP's experts. Until I read Complaint Counsel's motion to

exclude, I have never heard or seen Complaint Counsel claim that it had ever objected to the admission of any report prepared by NTSP's experts, including RX 3118-3130.

7. At 7:04 p.m. (CST) on May 4, 2004, I sent an e-mail to Michael Bloom, Ted Zang, Jonathan Platt, Christine Rose, and Sarah Croake, all of whom are representatives of Complaint Counsel. My e-mail listed the exhibits NTSP planned to use at the hearing during its examination of Dr. Robert Maness. The first exhibits listed in my e-mail were RX 3118-3130. A true and correct copy of my May 4, 2004 e-mail is attached as Exhibit H to NTSP's response to Complaint Counsel's motion to exclude.

8. During the testimony of Dr. Karen Van Wagner on May 5, 2004, an issue arose about whether Complaint Counsel could object to an exhibit during the hearing if it had failed to timely object by the April 8, 2004 deadline in the First Revised Scheduling Order. After the hearing adjourned on May 5, 2004, I talked to Michael Bloom about that issue. I explained to Mr. Bloom that some of the exhibits NTSP intended to use with Dr. Maness that were listed in my May 4 e-mail were not yet admitted into evidence. I asked Mr. Bloom to look at those exhibits and let NTSP's counsel know if Complaint Counsel intended to try to object to any of those exhibits.

9. After talking to Mr. Bloom, I returned to Thompson & Knight's Fort Worth office and sent another e-mail to Mr. Bloom, Ted Zang, Jonathan Platt, Christine Rose, and Sarah Croake. I sent that e-mail at 6:19 p.m. (CST) on May 5, 2004. In my e-mail I listed the exhibits that NTSP intended to use with Dr. Maness that were not yet admitted into evidence. The first exhibits listed in my May 5 e-mail were RX 3118-3130. My e-mail specifically references my conversation with Mr. Bloom earlier on that same day. In my e-mail, I once again asked Complaint Counsel to tell Respondent's counsel about any potential objections. A true and

correct copy of my May 5, 2004 e-mail is attached as Exhibit I to NTSP's response to Complaint Counsel's motion to exclude.

10. Because Complaint Counsel never responded to my e-mails, I approached Mr. Bloom again on the morning of May 6, 2004, before the hearing began. I showed Mr. Bloom a list of the exhibits identified in my May 5 e-mail and asked him if Complaint Counsel planned to try to object to any of those exhibits. Mr. Bloom reviewed my May 5 e-mail and confirmed that Complaint Counsel had no objections to any of the exhibits listed in my May 5 e-mail. I then told Mr. Katz that Complaint Counsel had no objections, and Mr. Katz subsequently offered the exhibits into evidence.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the forgoing is true and correct and that this declaration was executed on July 6, 2004, at Dallas, Texas.

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Nicole L. Rittenhouse