

[The body of the document is almost entirely obscured by heavy horizontal black redaction bars. Only a few faint lines of text are visible through the gaps.]

Neither TOPA nor its physicians are parties to this adjudicative proceeding. TOPA has never

been a member of NTSP. Yet the FTC's

[REDACTED]

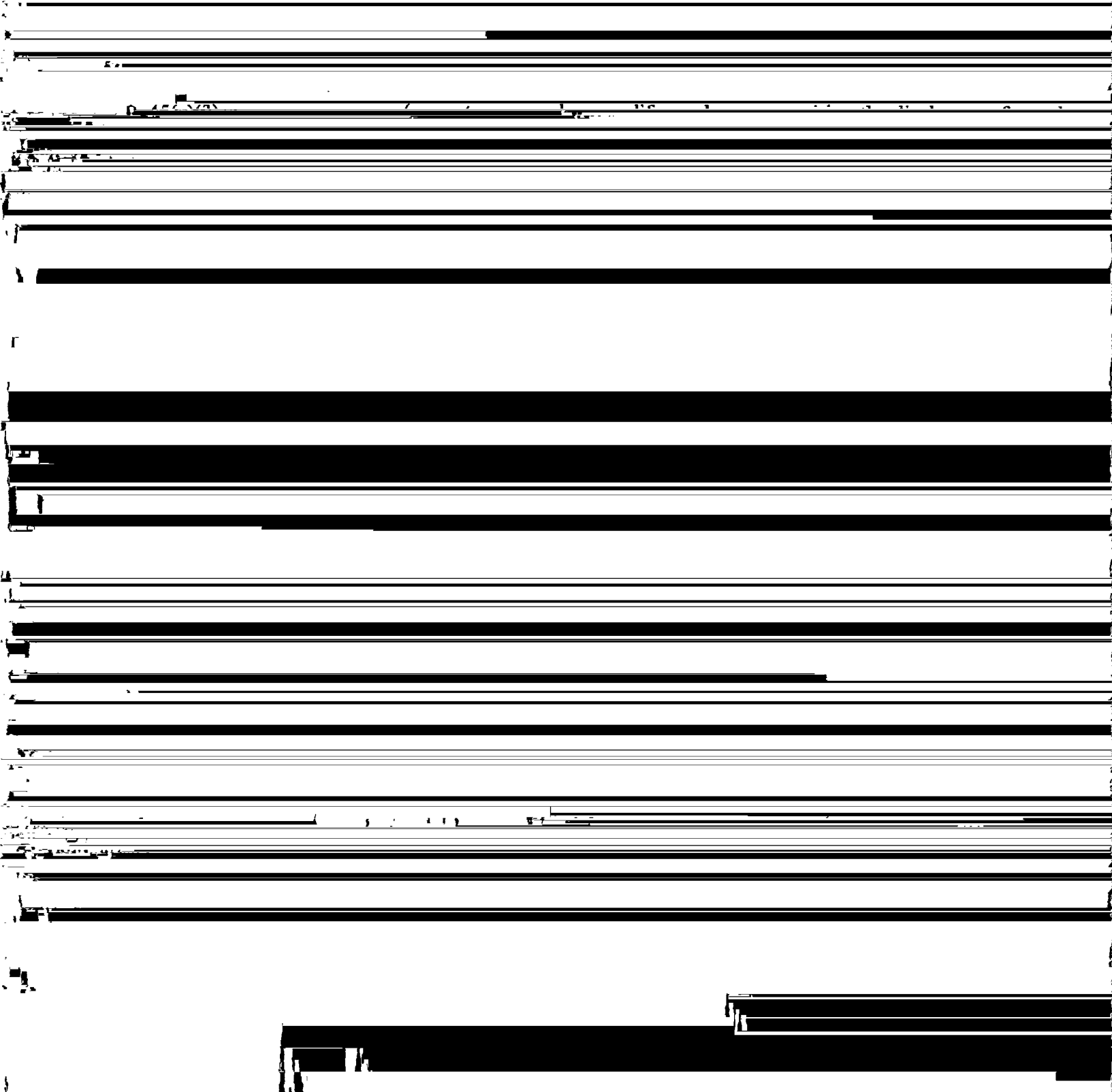
NTSP's business practices only as to the non-risk contracts. See, Complaint ¶14. Neither TOPA

approximately 200 physicians – a total of over a thousand categories of documents) Subpoena at p. 10; Request No. 14 (requesting documents sufficient to show physician's annual revenues derived from treatment of patients that reside in (a) Tarrant County; (b) Johnson County; (c)

the time to respond to the FTC subpoena so as to permit TOPA adequate time to investigate the impact on TOPA's business operations of attempting to respond to the FTC subpoena, and to permit the parties time needed to meet and confer in a good faith effort to resolve issues raised by the subpoena without prejudice to TOPA. The FTC would not agree to extend the deadline

willing to limit the scope of the subpoena on some matters "for now", most requests were refused. Adams Decl., ¶5. Having attempted in good faith to resolve these issues informally,

(authorizing Administrative Law Judge to "deny discovery or make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense"); *see also* Fed. R. Civ. P. 26(c) (court may grant a protective order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense); Fed. R. Civ



associations. For example, the FTC has requested various categories of documents related to the

that the FTC subpoena be expressly limited to the last 2 years.

C. Subpoena's Burdens Dwarf Benefits.

The burden of complying with this overbroad subpoena dwarfs the likely benefit. For

example, TOPA is not a member of NTCP. If TOPA is not a member of NTCP, then TOPA is not a member of NTCP.

document requested such as communication records and other information requested.

Hundreds of thousands of pages of information would have to be reviewed and many employees

diverted from their normal job assignments. (See Decl. #9, TOPA)

should not be required to produce any documents unless and until the FTC limits its requests in a manner sufficient to reasonably alter that balance.

D. Existing Protective Order Does Not Adequately Protect TOPA.

Many of the documents requested by the FTC subpoena contain competitively sensitive information, such as pricing, revenues, contract terms, utilization, and practice analysis data. All

attorneys in the case from discussing the data in the documents with their respective clients. TOPA respectfully submits that it should not be required to produce any documents unless and until the entry of a more restrictive protective order that adequately protects TOPA and its patients while reducing the administrative cost and burden on TOPA to comply with the order.

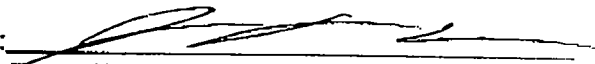
E. FTC Should Reimburse Non-Party TOPA For Its Expenses.

The cost of complying with the FTC subpoena in its present form will be substantial requiring the work of dozens of employees reviewing, organizing, and copying thousands of documents. Since Doc# 119 TOPA will also have to fund numerous additional

Respectfully submitted,

PASSMAN & JONES,
A Professional Corporation

By:


James F. Adams
State Bar No. 008363450

0500-D

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Dallas, Texas 75270
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ATTORNEYS FOR NON-PARTY MOVANT
TEXAS ONCOLOGY, P.A.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that the foregoing instrument was served on the following on November 19, 2003:

Michael J. Bloom
Federal Trade Commission

New York, NY 10004

Barbara Anthony, Director

Office of the Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, D.C. 20547

Gregory S.C. Huffman
Thompson & Knight, L.L.P.
1700 Pacific Ave. #3300
Dallas, TX 75201-4693


James F. Adams

Subpoena Duces Tecum to Texas Oncology
In re North Texas Specialty Physicians

DEFINITIONS

1. The term "practice group" means Texas Oncology, PA, affiliated enterprises, physicians practicing medicine through Texas Oncology, PA.

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systems; copies of documents that are not identical duplicates of the originals; and copies of documents the originals of which are not in the possession, custody or control of the

(a) Unless otherwise specified, the term "documents" shall include all

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Docket Number 9312

another document includes the other document itself (e.g., a document that "discusses" --

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necessary to bring within the scope of the request all documents that might otherwise be construed to be outside its scope.

15. The term "year" means either the calendar year or, for financial records, the fiscal year.
16. The term "agreement" means any oral or written contract, arrangement or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments.
17. The term "plan" means a proposal, recommendation or consideration, whether or not precisely formulated, finalized, authorized, or adopted.

18. The term "..."

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Docket Number 9312

INSTRUCTIONS

1. Unless otherwise indicated, each specification covers documents dated, generated, received, or in effect from January 1, 1998 to the September 30, 2003.
2. Compliance with this request requires a search of all documents, wherever located, within the possession, custody, or control of practice group.
3. Production of documents "separately for each physician in the practice group" requires the production of documents applicable to each physician individually and to physicians within the practice group more generally (e.g., a payor-practice group contract for the provision of medical services by the practice group generally). Where documents applicable to individual physicians are unavailable, generally responsive documents

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employees of practice group or who do not work on practice group's premises.

6. The response to this Request shall be submitted in the following manner:

- a. Documents provided shall be complete and, unless privileged, unredacted, submitted as found in the company's files (e.g., documents that in their original condition were stapled, clipped or otherwise fastened together or maintained in separate file folders shall be produced in such form).
 - (i) practice group may submit legible photocopies (with color photocopies where necessary to interpret the document), in lieu of original documents, provided that such copies are accurate.

Subpoena Duces Tecum to Testify

b. Documents submitted in hard copy shall be submitted in sturdy cartons not
larger than 16 inches by 21 inches by 12 inches.

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addressee, and recipient, state the person's full name, title, and address.

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Docket Number 9312

SPECIFICATIONS

1. Documents sufficient: to identify (a) physician; (b) each location from which he/she has practiced medicine and indicating whether his/her practice at each such location is or is not in connection with the practice group; and (c) the percentage of that physician's total hours and revenues attributable to each such location; and to show (d) each physician organization in which physician participates or has participated; (e) the nature of physician's participation in each physician

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12. All other documents that

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VERIFICATION

This response was prepared by me or under my personal supervision from the documents

records of Texas Oncology PA in accordance with

subpoena duces tecum issued by the Federal Trade Commission in docket number 9312. It is

complete and correct to the best of

Subpoena Duces Tecum to Texas Oncology

Docket Number 0312

I, Maria Coppola, hereby certify that on November 6, 2003, I caused a copy of the attached subpoena duces tecum to be served upon the following persons by certified mail:

Texas Oncology, PA
1001 12th Avenue, Suite 200
Fort Worth, Texas 76104

and the following person by Federal Express

Gregory S. C. Huffman, Esq.

subpoena with FTC attorney John Platt. Later the same day, Mr. Platt and I discussed at length

various topics including TOPIC

was full. I was told by the FTC staff that Mr. Platt would not be back in the office until November 21, 2003, the compliance deadline. On that same day, I left a message for Ms. Coppola requesting to discuss the scope of the FTC subpoena, an extension of time in which to respond, and confer regarding TOPA's motion for a protective order. I did not receive a reply as of the execution of this declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 19, 2003.



James F. Adams

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

NORTH TEXAS SPECIALTY PHYSICIANS

Docket No. 9312

DECLARATION OF J. E. SIMS

I, J. E. Sims, declare as follows:

1. My name is J. E. Sims. I am over the age of 21 years old and I am competent and

9. Many of the documents requested by the FTC subpoena contain competitively sensitive information, such as pricing, revenues, contract terms, utilization, and practice analysis data. All such information is confidential and treated by TOPA as trade secrets. In my opinion, TOPA would be competitively disadvantaged if such information were disclosed to TOPA's competitors or its payors. Some of the requested information, in its current form, also necessarily contains patient identification and other patient data.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

PASSMAN & JONES

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ATTORNEYS AT LAW

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FAX TRANSMISSION

November 20, 2003

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