

[PUBLIC]

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



[REDACTED]

defense. Some of the documents marked confidential and, therefore, unable to be reviewed include correspondence to and from NTSP itself.

II.

**Argument and Authorities**

The terms of the protective order worked adequately for discovery purposes, but now that the case has moved closer to the time when NTSP will need to respond to particular documents, the third-party payors' expansive use of confidentiality designations and the implications of those

designations impedes Defendant counsel's ability to prepare the case. The court should find

significance of many documents<sup>2</sup> Respondent requests that the protective order be modified to

allow one of Respondent's personnel, Dr. Karen Van Wagner, to have limited access to specific categories of documents:

- (1) documents referring to the conduct or contractual activities of NTSP and its participating providers; and
- (2) documents containing data comparing NTSP and other providers that is more than 12 months old.

The limited nature of these categories should effectively remove concerns that NTSP would be

able to use any of the information revealed to Dr. Van Wagner. C. 1

special circumstances of the communications, or whether the interpretation of the communications is affected by special meanings of terms or references to specific persons.

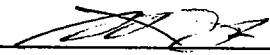
Allowing business personnel limited access to otherwise confidential information has been found necessary in antitrust cases. In *United States v. Lever Brothers Company*, the court found that counsel must be able to discuss sales and production data with its client's personnel in order to have a meaningful review of the information and an adequately prepared defense.<sup>3</sup> The data

was adequately protected from misuse by a protective order allowing disclosure only for consultation with counsel and preventing personnel from making copies, revealing the contents to others, or using the information for any purpose other than preparation and defense of the pending action.<sup>4</sup> In reaching this decision, the court also noted that at the trial, personnel would



limited access to specified categories of documents in order to assist in the preparation of NTSP's defense; and (b) grant such other and further relief to which NTSP may be justly entitled.

Respectfully submitted,



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BEFORE FEDERAL TRADE COMMISSION

IN THE MATTER OF

NORTH TEXAS SPECIALTY PHYSICIANS,  
A CORPORATION.

Docket No. 9312

**Proposed Order Granting North Texas Specialty Physicians'  
Motion to Modify Protective Order**

**I.**

Respondent North Texas Specialty Physicians filed a Motion to Modify the Protective Order on March 4, 2004. For the reasons set forth below, Respondent's motion is GRANTED.

**II.**

The current Protective Order Governing Discovery Materials allows for the designation of documents as "Confidential" or "Restricted Confidential-Attorney's Eyes Only." Documents so designated cannot be viewed by NTSP personnel except at deposition or trial. However, because of the excessive use of confidentiality designations, the likelihood that these documents will be