

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joint stipulation that (a) listed certain exhibits to which no objection had been asserted or to which either side had withdrawn their objection, and (b) asked the Administrative

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 434, I sn lif iOrdere, I33 Tw int Counse4(8.) i2Xa a68ut whetM3

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.

Nicole L. Rittenhouse