

will do in response to a non-risk payor offer (*see, e.g.*, F. 74-75 and Initial Decision at pages 68-69);

(5) NTSP's participating physicians do not consult with each other when responding to the poll and do not know how any other specific physician or physician group responded to the poll (*see, e.g.*, F. 92, 95 and Initial Decision at pages 68-69);

(6) Complaint Counsel was required to define and prove a relevant market (*see, e.g.*, Initial Decision at pages 61-63);

(7) Complaint Counsel's expert did not attempt to prove a relevant market (*see, e.g.*, Initial Decision at page 63);

(8) the concerted action requirement of Section 1 of the Sherman Act is not automatically satisfied merely because an organization of otherwise competing physicians is involved (*see, e.g.*, Initial Decision at page 67);

(9) payors (including United, Aetna, and Cigna) offered NTSP the same rates or lower rates than offered to other IPAs or in direct offers to physicians (*see, e.g.*, F. 116, 170-71, 188, 217, 290, 328 and Initial Decision at pages 82-83);

(10) there was insufficient evidence to establish that the rates United, Cigna, and Aetna agreed to with NTSP were uniformly higher than rates health insurance payors offered to other IPAs or directly to other physicians (*see, e.g.*, Initial Decision at pages 82-83);

(11) payors (including United, Aetna, and Cigna) were repeatedly the subject of governmental investigations and sanctions and NTSP was involved in reporting the payors' conduct to governmental authorities (*see, e.g.*, F. 192-94, 256-58, 357-63);

(12) NTSP's right to refuse to deal with payors should not be restricted (*see, e.g.,* Initial Decision at pages 88-90);

(13) NTSP's right to avoid risky contractual situations or the risk of contravening state or federal law should not be restricted (*see, e.g.,* Initial Decision and Order at pages 88-90, 94).

(14) NTSP's right to communicate factual information and objective comparisons should not be restricted (*see, e.g.,* Initial Decision and Order at page 94);

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2004, I caused a copy of the foregoing document to be served upon the following persons:

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