[PUBLIC]

## UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

the Order and raised serious legal issues as to the Order's provisions that bar otherwise lawful conduct, limit NTSP's lawful communications, and terminate contracts without any showing as

Complaint Counsel themselves have concerns regarding the Commission's Opinion. They have filed a Petition for Clarification of Certain Statements in the Commission Opinion, requesting that the Commission remove or qualify several fundamental statements made in the Opinion regarding appropriate use of the messenger model, allowable activities by physician groups, and the conformance of the opinion with the *Health Care Statements* and FTC Advisory Opinions.<sup>4</sup> Complaint Counsel's request echoes some of the same issues as support NTSP's defense on the merits.

## II. Balance of Equities

As applied to every significant provision in the Order, NTSP's Motion to Stay explained (and supported with affidavits and other evidence) how the balance of equities — whether there is irreparable harm to NTSP if a stay is not granted, whether others will be harmed if a stay is granted, and whether a stay is in the public interest — weighs in favor of NTSP. Complaint Counsel argues that NTSP's claims of injury have no merit because NTSP has not sufficiently quantified or explained future potential business and reputation losses.<sup>5</sup> NTSP has explained and quantified these losses by affidavit to the extent it is possible — NTSP obviously cannot predict exactly the future harm to its reputation and business.<sup>6</sup> NTSP's loss will depend on the reactions of persons outside NTSP. The effect of limitations on NTSP's rights to free speech and to contract will depend on payors' future legal violations, breaches of contract, and other conduct.<sup>7</sup>

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on January 4, 2006, I caused a copy of the foregoing document to be served upon the following persons: