

ORIGINAL

ATTORNEYS AND COUNSELORS

1722 ROUTH STREET • SUITE 1500
DALLAS, TEXAS 75201-2533
(214) 969-1700

AUSTIN
DALLAS
FORT WORTH
HOUSTON
NEW YORK
SAN ANTONIO

DIRECT DIAL: (214) 969-1149
EMAIL: Nicole.Williams@tklaw.com

FAX (214) 969-1751
www.tklaw.com

LONDON
MEXICO CITY
MONTERREY
PARIS
RIO DE JANEIRO
VITÓRIA

August 28, 2008

Via Federal Express

239449

Mr. Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW
Room H-159
Washington, DC 20580

537819

Re: *In the Matter of North Texas Specialty Physicians*; Docket No. 9312

Dear Mr. Clark:

Enclosed are the original and thirteen (13) copies of the Response of North Texas Specialty Physicians to Complaint Counsel's Proposal for Order Modification on Remand, along

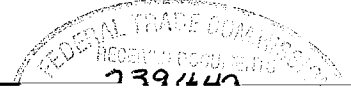
ORIGINAL

[PUBLIC RECORD]

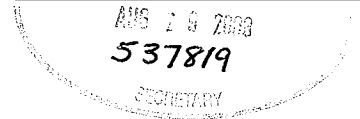
UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman

~~Donald James Heskett~~



Jon Leibowitz
J. Thomas Rosch



In the Matter of

~~North Texas Specialty Physicians~~

Docket No. 9312

**RESPONSE OF NORTH TEXAS SPECIALTY PHYSICIANS TO COMPLAINT
COUNSEL'S PROPOSAL FOR ORDER MODIFICATION ON REMAND**

The Fifth Circuit, in remanding this proceeding to the Commission, stated

While we do not accept many of NTSP's arguments regarding this

which the Fifth Circuit obviously believed needed to be given greater recognition in the order.

Contrary to NTSP's contention, the Order does not broadly prohibit it from deciding whether or not to deal with a payor. Nor does the Order require NTSP to contract with all payors or to messenger all payor offers.³

These limitations [in the Initial Decision] were based on the ALJ's view that a prohibition of agreements to refuse to deal would impose on NTSP a broad duty to contract with all payors. ID at 89. The language in our order does not mandate that result.⁴

NTSP remains free, for example, to offer utilization management

In every instance in which NTSP has been approached by a payor, the payor is seeking to have NTSP become a party to the contract. Of course, in contracts involved in NTSP's capitated program, NTSP is the contracting party. In other contracts, NTSP and physicians participating in the program will both be parties to the payor's contract. In some situations, NTSP will be contractually bound to provide credentialing or utilization management services. Of course, NTSP's liab-

risks to Respondent, its member physicians, and its patients,” then the clause runs

include a proviso recognizing “that nothing in this Paragraph II.A.2 shall be

Dated August 28, 2008.

Respectfully submitted,



THOMPSON & KNIGHT LLP

Gregory S. C. Huffman
William M. Katz, Jr.
Gregory D. Binns
Nicole L. Williams

1722 Routh Street, Suite 1500
Dallas, TX 75201
214.969.1700 - Telephone
214.969.1751 – Fax

gregory.huffman@tklaw.com
william.katz@tklaw.com
gregory.binns@tklaw.com
nicole.williams@tklaw.com

ATTORNEYS FOR NORTH TEXAS SPECIALTY
PHYSICIANS

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2008, I caused a copy of the foregoing document to be served upon the following persons:

Office of the Secretary (via Federal Express)
Donald S. Clark
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Jonathan Platt (via regular mail and e-mail)
Federal Trade Commission
Northeast Region
One Bowling Green, Suite 318
New York, NY 10004



Nicole L. Williams

2392526.1