Three years after the Federal Trade Commission (FTC) ruled that the North Texas Specialty Physicians (NTSP) independent practice association (IPA) was engaging in illegal price-fixing, the Fifth Circuit Court of Appeals affirmed the decision, stating that negotiation (on behalf of physician members) that doesn’t involve risk sharing with payors or any form of improved efficiency arising out of clinical integration, runs afoul of antitrust laws. The FTC originally examined the NTSP arrangement under a “quick-look” analysis. Under such an analysis, if the FTC finds that there is inherently suspect conduct, the respondent must then provide a procompetitive business justification for the conduct. In this case, NTSP’s joint contracting activities neither saved money nor improved quality, leading the FTC to the conclusion that they constituted illegal price-fixing under Section 1 of the Sherman Antitrust Act.

NTSP is not the first, and is unlikely to be the last, IPA that has faced antitrust scrutiny and has been found to be in violation. Traditionally, IPAs have been able to negotiate on behalf of their members if the joint-contracting agreement has an element of risk-sharing built into it, or if the IPA has embarked on a clinical integration scheme to improve efficiency among its members (and even under this latter exception, only two clinically integrated IPAs have successfully survived antitrust challenges). The significance of the NTSP decision for future IPA activities is the FTC and the Court’s interpretation of the IPA’s use of the “messenger model”, which NTSP used to poll members to find out minimum fees they would accept before negotiating with insurers. The “messenger model” has traditionally been a way for physician networks to use a single agent to relay contract information between the group and a payor, but has never allowed the group to set contract terms or negotiate on behalf of the group. NTSP argued that there are actually “spillover” effects from previous risk-sharing contracts that helped improve quality, and that the FTC failed to consider these “spillover” effects carefully enough when making its decision.

Even though the Fifth Circuit affirmed the FTC’s decision as a whole, the Court did rule that the portion of the decision in which the FTC prohibited NTSP from facilitating any contract negotiations on behalf of its members was overbroad. While there is a delicate balance between the ability of IPAs to facilitate easier negotiations between member physicians and payors and activity that verges on being anticompetitive, it is important for physicians to be able to negotiate with payors, particularly in those instances in which physicians face a disproportionate disadvantage against “large, sophisticated payors”. In order to combat this disadvantage at the bargaining table, physicians have to hope that joining an IPA will help bolster their negotiating leverage, and critics of the decision argue that it is “likely to prevent doctors from trying to come up with efficient and innovative ways of coming together to practice medicine.”

NTSP is considering appealing the Fifth Circuit decision, which may or may not get a court to look at the clinical efficiencies that it argues are present. Regardless of what happens in this particular case, the important lesson for other IPAs to take away is that the more obscure the procompetitive benefits of an IPA’s joint-contracting practice are, the less likely it will be able to withstand antitrust scrutiny.


Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: “The U.S. Healthcare Certificate of Need Sourcebook” [2005 - Beard Books], “An Exciting Insight into the Healthcare Industry and Medical Practice Valuation” [2002 – AICPA], and “A Guide to Consulting Services for Emerging Healthcare Organizations” [1999 John Wiley and Sons].

Mr. Cimasi is the author of numerous additional chapters in anthologies, books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious “Shannon Pratt Award in Business Valuation” conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows.

Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the Senior Vice President of HEALTH CAPITAL CONSULTANTS (HCC), where he focuses on the areas of valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia, and is a Fellow of the American College of Healthcare Executives. He has co-authored “Research and Financial Benchmarking in the Healthcare Industry” (STP Financial Management) and “Healthcare Industry Research and its Application in Financial Consulting” (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser’s Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.

Anne P. Sharamitaro, Esq., is the Vice President of HEALTH CAPITAL CONSULTANTS (HCC), where she focuses on the areas of Certificate of Need (CON); regulatory compliance, managed care, and antitrust consulting. Ms. Sharamitaro is a member of the Missouri Bar and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as an editor for the Journal of Health Law, published by the American Health Lawyers Association. She has presented healthcare industry related research papers before Physician Hospitals of America and the National Association of Certified Valuation Analysts and co-authored chapters in “Healthcare Organizations: Financial Management Strategies,” published in 2008.