UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of	)	
Evanston Northwestern Healthcare Corporation, an Illinois corporation, and	)	Docket No. 9315
ENH Medical Group, Inc., an Illinois corporation.	)	

COMPLAINT COUNSEL'S FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS ISSUED TO RESPONDENTS EVANSTON NORTHWESTERN HEALTHCARE AND ENH MEDICAL GROUP, INC.

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.37, Complaint Counsel hereby request that Respondents Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc. (hereinafter, collectively, "Respondents") produce all documents and other things responsive to the following requests, within their possession, custody, or control within twenty days of service of this request, in accordance with the Definitions and Instructions set forth below.

DEFINITIONS

A. The term "ENH Medical Group" means the ENH Medical Group, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is

partial (25 percent or more) or total ownership or control between the ENH Medical Group and any other person.

B. The term “ENH" means Evanston Northwestern Healthcare Corporation, its

that negotiate contracts on behalf of physicians or physicians groups.

H. The term “Geographic Area” means Lake, Cook, Kane, Kendall, and McHenry Counties in Illinois.

I. The term "documents" includes all computer files and written, recorded, and

health care plans, point-of-service plans, self-insured health benefit plans, employer or union health benefit plans, Medicare, Medicaid, CHAMPUS, or private or governmental health care plans or insurance of any kind.

N. The term "physician organization" means any entity that directly or indirectly provides, or through which physicians contract to provide, physician services to health plans, including but not limited to solo or group medical practices, individual practice associations, medical foundations, and physician-hospital organizations.

O. The term “relevant period” is all time since January 1, 1995.

INSTRUCTIONS

I. All references to year refer to calendar year unless otherwise specified. Unless otherwise specified, each of the specifications calls for documents prepared or received since January 1, 1995. If Respondents have produced documents responsive to this request in the course of the pre-complaint investigation of this matter, FTC File No. 011-0234, those documents need not be produced again.

II. This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by Respondents through trial.

III. The response to this request shall be submitted in the following manner:

(1) Documents provided shall be complete and, unless privileged, unredacted, submitted as found in the company's files (e.g., documents that in their original condition were stapled, clipped or otherwise fastened together

shall be produced in such form). Respondents may submit photocopies (with color photocopies where necessary to interpret the document), in lieu of original documents, provided that such copies are accompanied by an affidavit of an officer of the company stating that the copies are true, correct, and complete copies of the original documents.

(2) Mark each page with corporate identification and consecutive document control numbers. Number each box and mark each box with the name(s) of the person(s) whose files are contained in that box. Documents shall be submitted in sturdy cartons not larger than 1.5 cubic feet, and packed in a manner that reasonably minimizes the cubic footage of the total submission (for example, if a person's files fill only half of a box, please fill the other half with another person's files if possible, rather than leaving the space empty).

(3) Responsive documents from each person's files shall be produced together, in file folders or with other enclosures that segregate the person's files by the number of the request to which it is responsive. If a document is responsive to more than one request, produce the document in response to the specification to which it is primarily responsive.

(4) Provide a master list showing: (a) the name of each person from whom responsive documents are submitted; and (b) the corresponding consecutive document control number(s) used to identify that person's

documents, and the request to which the document is responsive. If the master list exists as a computer file(s), provide both the computer file(s) and a printed hard copy of the master list.

IV. Data and computer files shall be provided both in electronic form on magnetic media, and on paper, unless otherwise agreed to by Commission staff.

V. Magnetic media shall be submitted in the following forms and formats:

(1) Magnetic storage media. The FTC will accept: (1) 9-track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI; (2) 3.5-inch microcomputer floppy diskettes, high-density, double-sided, formatted for IBM compatible computers (1.44 MB capacity); (3) Iomega ZIP disks formatted for IBM compatible PCs (100 or 250 MB capacity); (4) CD-R74 CD-ROM readable disks formatted to ISO 9660 specifications (650 MB capacity); (5) Iomega DITTO mini data cartridges (2000 MB capacity). The FTC will accept 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes by pre-authorization only. In all events, files provided on 4mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs. Where data is to be transferred from a UNIX system the FTC will accept data provided on 8mm DAT created using TAR or DD.

(2) File and record structures.

(a) Magnetically-recorded information from centralized non-microcomputer-based systems:

(i) File structures. The FTC will accept sequential files only.

All other file structures must be converted into sequential format.

(ii) Record structures. The FTC will accept fixed length records only. All data in the record is to be provided as it would appear in printed format: *i.e.*, numbers unpacked, decimal points and signs printed.

(b) Magnetically-recorded information from microcomputers: Microcomputer-based data: word-processing documents should be in DOS-text (ASCII), WordPerfect 8 or earlier version, or Microsoft Word 2000 or earlier version format. Spreadsheets should be in Microsoft Excel 2000 (.xls) or earlier version, or Lotus-compatible (.wk1) format. Database files should be in Microsoft Access 2000 (.mdb) or earlier version, or dBase-compatible (.dbf), version 4 or earlier, format. Database or spreadsheet files also may be submitted after conversion to ASCII delimited, comma separated format, with field names as the first record, or fixed length fields accompanied by a record layout. Graphic images must be in TIFF 4 format, compressed and unencrypted. Other proprietary software formats for word processing documents, spreadsheets, databases, graphics and other data files will be accepted by pre-authorization only. For microcomputer files that are too large for one disk, files may be provided in a compressed ZIP format.

(3) Documentation

(i) Data must be accompanied by the following information: (a) full path name of the file and (b) the identity of the media on which it resides, e.g. the identity of the cd, zip disk or floppy that holds the file. In the case of complex files or directories of files, all component files that are part of a given directory must be specified with their full path names. Where necessary, the subdirectories that must be created in order to successfully read these submitted files must be provided.

(ii) Files must be accompanied by the following information: (a) filename; (b) the identity of the particular storage media on which the file resides; (c) the position of the file on the media. For all sequential files, the documentation also must include (a) the number of records contained in the file; (b) the record length and block size; and (c) the record layout, including (i) the name of each element, (ii) the element's size in bytes, and (iii) the element's data type. The documentation should be included in the same package as the storage media, along with a printout of the first 100 records in report format.

(4) Shipping: Magnetic media should be carefully packed to avoid damage, and must be shipped clearly marked: **MAGNETIC MEDIA DO NOT X-RAY.**

(5) Virus Checks: Media will be scanned for viruses. Infected media will be returned for replacement.

VI. If any documents are withheld from production based on a claim of privilege,

provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log that includes each document's authors, addressees, date, a description of each document, all recipients of the original and any copies, and the specification(s) of this request to which the document is responsive. If the log exists as a computer file(s), provide both the computer file(s) and a printed hard copy of the log. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall include the number of pages of each document and shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable the Commission to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the company that were not directly or indirectly furnished to the company or any third-party, such as internal law firm memoranda, may be omitted from the log.

VII. If documents responsive to a particular specification no longer exist for reasons

other than the ordinary course of business or the implementation of the company's document retention policy, but the Respondents have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.

VIII. If the Respondents believe the scope of this request for production of documents can be narrowed consistent with the Commission's need for information, you are encouraged to discuss such possible modifications with Thomas H. Brock at (202) 326-2813, or Philip Eisenstat at (202) 326-2769.

IX. In complying with the specifications, the Respondents may send the responsive materials to the attention of Paul Nolan, Federal Trade Commission, Room 5255, 601 New Jersey Ave., N.W., Washington, DC 20001.

DOCUMENT REQUESTS

4. All documents relating to any efficiencies in the operations of Respondent Hospitals that were projected to result, purportedly resulted, or will result from the Merger, including but not limited to any integration of clinical services, managerial authority or administrative services, elimination of duplicative services, or other reductions in either operational or capital costs attributable to the Merger.

5. All documents relating to any changes in the quality of care furnished by Respondent Hospitals that were projected to result, purportedly resulted, or will result from the Merger.

6. All documents relating to the criteria that hospitals in the Geographic Area, including Respondent Hospitals, use or have used in negotiating, evaluating, and accepting or rejecting contracts with health plans, or the application of those criteria in negotiating, evaluating, accepting or rejecting any specific contracts.

7. All documents relating to competition among hospitals located in the Geographic Area, including Respondent Hospitals, for patient admissions, membership of physicians on the hospital's medical staff, physician referrals, managed care contracts, the provisions of either outpatient services or primary, secondary or tertiary inpatient acute care hospital services, or for contracts with health plans or managed care networks.

8. All documents relating to competition among physicians or physician groups in the Geographic Area, including competition in contracting with health plans or to be included in managed care networks.

9. All documents relating to each affirmative defense set forth in your Answer to the

Complaint.

10. All documents relating to any support for, opposition to, or opinion regarding the actual or potential effects of the Merger on the cost of, pricing for or quality of services furnished by Respondent Hospitals.

11. All documents that constitute or refer or relate in any way to studies, formulas, or surveys of Respondent Hospitals regarding the strategies and formulas they have used or have considered using in setting prices for inpatient and outpatient hospital services.

12. All documents relating to the ability (or inability) of health plans to divert their enrollee patients to Respondent Hospitals from another hospital, or to another hospital from Respondent Hospitals.

with managed care organizations during the period 1999 through 2004.

18. All annual reports and annual or quarterly financial statements (including balance sheets and income statements) for Respondents during the period 1995 through 2004.

19. All periodic or special newsletters sent to doctors that were members of or otherwise affiliated with the ENH Medical Group or Highland Park IPA during the period 1998 through 2004.

20. All annual cost reports prepared by or for Respondent Hospitals for submission to Blue Cross, Blue Shield, Medicare or Medicaid during the period 1998 through 2004.

21. All documents relating to or constituting annual reports regarding the net payments made by health plan by product line to Respondent Hospitals during the period 1998 through 2004.

22. All documents relating to or constituting contracts or subcontracts (including amendments) between a Respondent Hospital and its independent practice association (*i.e.*, ENH Medical Group or Highland Park IPA), under which the Respondent Hospital provided covered health care services to patients for which it received payment from the independent practice association or pursuant to contracts to which the independent practice association was a party.

23. All documents referenced in or containing information regarding Respondents' Answers to Complaint Counsel's First Set of Interrogatories.

Respectfully Submitted,

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing documents were served on counsel for the respondent by electronic mail and first class mail delivery:

Michael L. Sibarium
Charles B. Klein
WINSTON & STRAWN, LLP
1400 L Street, NW
Washington, DC 20005

Duane M. Kelley
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Michael T. Hannafan
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One East Wacker Drive
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and delivery of two copies to:

The Honorable Stephen J. McGuire
Federal Trade Commission
600 Pennsylvania Avenue
Room 113
Washington, DC 20580

_____ _____

Date

Thomas H. Brock
Complaint Counsel