
**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of

EVANSTON NORTHWESTERN HEALTHCARE CORP.

Docket No. 9315

COMPLAINT COUNSEL'S PROPOSED FINDINGS OF FACT IN REPLY

(Public Version)

Volume III

(CCRFF 965-1481)

Federal Trade Commission

VOLUME III

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 A. Definition and Measurement of Quality (CCRFF 1165-1195) 693

e. **Factual Evidence Is Inconsistent With Dr. Haas-Wilson's Bargaining Theory**

i. **Dr. Haas-Wilson's Bargaining Theory Is Not Grounded In Theory Or Common Sense**

065 — Dr. Haas-Wilson's theory of bargaining theory is based on bargaining theory in

nesses. She argues that [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Response to Finding No. 966:

The finding is incomplete. Dr. Haas-Wilson explained that under bargaining theory, while a "hospital's incremental value to the plan is a function of the plan's

opportunity cost of moving to the next best alternative network.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

in camera).

Response to Finding No. 968.

The finding is irrelevant. As Dr. Haas Wilson explained, it was not necessary under bargaining theory for HPH and Evanston Hospital to be each others closest competitor in either the first or second stage of competition between hospitals, for the merger of Evanston and Highland Park to change the market power available to the

Wilson did not rely on those two propositions to reach her conclusion that the merger created or enhanced market power. Instead Dr. Haas-Wilson conducted a scientific

inquiry into the nature of the post merger pricing and only after that inquiry did she

970. { [REDACTED] } (Haas-Wilson, Tr. 2759-60, *in camera*).

Response to Finding No. 970:

The finding is irrelevant. There is no basis in the record for finding it necessary to

[REDACTED]
} (Haas-Wilson, Tr. 2803-04, *in camera*). { [REDACTED]
[REDACTED]
[REDACTED] } (Haas-Wilson, Tr.

Response to Finding No. 972:

The cited source does not mention Dr. [REDACTED] in [REDACTED]

sentence Dr. Haas-Wilson did rely on pertinent information in reaching her conclusion

evidence of the post merger price increases into other data to eliminate other explanations.

975. PHCS did not play Eyanston Hosnital off HPH during negotiations before the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } (Ballengee, Tr. 246, *in camera*; CX 46 at 1, *in camera*).

Notwithstanding the “significantly higher” rates proposed by ENH, the fact that “the

[REDACTED]

[REDACTED] (Haas-Wilson, Tr. 2817-18, *in camera*). [REDACTED]

Further, Ms. Ballengee's own testimony in this matter is the best evidence of

DIICS' view of the pre-merger environment. Her testimony confirms that DIICS

viewed Evanston and Highland Park as alternatives to each other prior to the merger.

(Ballengee, Tr. 166. *See* CCRFF 975).

977. [REDACTED]

[REDACTED] (Mendonsa, Tr. 562-63, *in camera*).

[REDACTED] (Mendonsa, Tr. 569).

Response to Finding No. 977:

The finding is irrelevant. [REDACTED]

[REDACTED]

[REDACTED]

With respect to the first sentence of the finding Respondents also fail to provide

the full testimonial record:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Mendoza Tr. 562-63, *in camera* (emphasis added)).

camera).

[REDACTED]

[REDACTED] (Holt-Darcy, Tr. 1513 in

camera (emphasis added)),

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Holt-Darcy, Tr. 1518-9, in camera).

070 Great West also did not play one hospital off another to get better rates. (Darcy)

[REDACTED]

[REDACTED]

a strong negotiating position” because there were no alternatives to which One Health could turn. “We knew that we had to get a contract with the hospital . . . essentially

regardless of what the alternatives were.” (Interview, 6/18/10)

Response to Finding No. 981:

Respondent misstates the record. Dr. Haas-Wilson never answered any question with regard to Humana's testimony on this point. There is no evidence in the record at all on this issue at this point in the transcript.

Nowhere in Dr. Haas-Wilson's testimony does she say that managed care organizations need to "play" one hospital off against the other for her theory to be valid. (See Haas-Wilson, Tr. 2476). This is simply a straw man, without substance created by

favor of Evanston, that would have had a very negative effect on Highland Park.); Spaeth, Tr. 2172-73, 2178-79 (Highland Park executives knew that the hospital could not sustain

network.). *See also* Newton, Tr. 303 ("If we're looking for a particular price or a

check. {

[REDACTED]

[REDACTED]

} (Ballengee, Tr. 167 (When

the other. "If in fact the negotiation and the notes were not going well at one hospital

iii. Dr. Haas-Wilson's Bargaining Theory Does Not Apply Here Because She Admits That A Network Without ENH Would Still Be Marketable

[REDACTED] } (Haas-Wilson, Tr. 2762, *in camera*).

Response to Finding No. 984:

The finding is irrelevant. Respondents have created a straw man, without substance or applicability to Dr. Haas-Wilson's testimony. Nowhere does Dr. Haas-

[REDACTED]

applied bargaining theory to the negotiations between hospitals and managed care organizations. Under bargaining theory the outcome of the bargaining between the

without ENH was One Health. See CCFE 1101-77 for the complete story of One

II-112

with ENH and LADA - ENH (CCFE 1150-50)

987. {

(Haas-Wilson, Tr. 2766. *in camera*). {

health plan to exclude a hospital from its network is a powerful tool and defines each side's bargaining position. (Haas-Wilson, Tr. 2470. *See also* Noether, Tr. 6189). When a

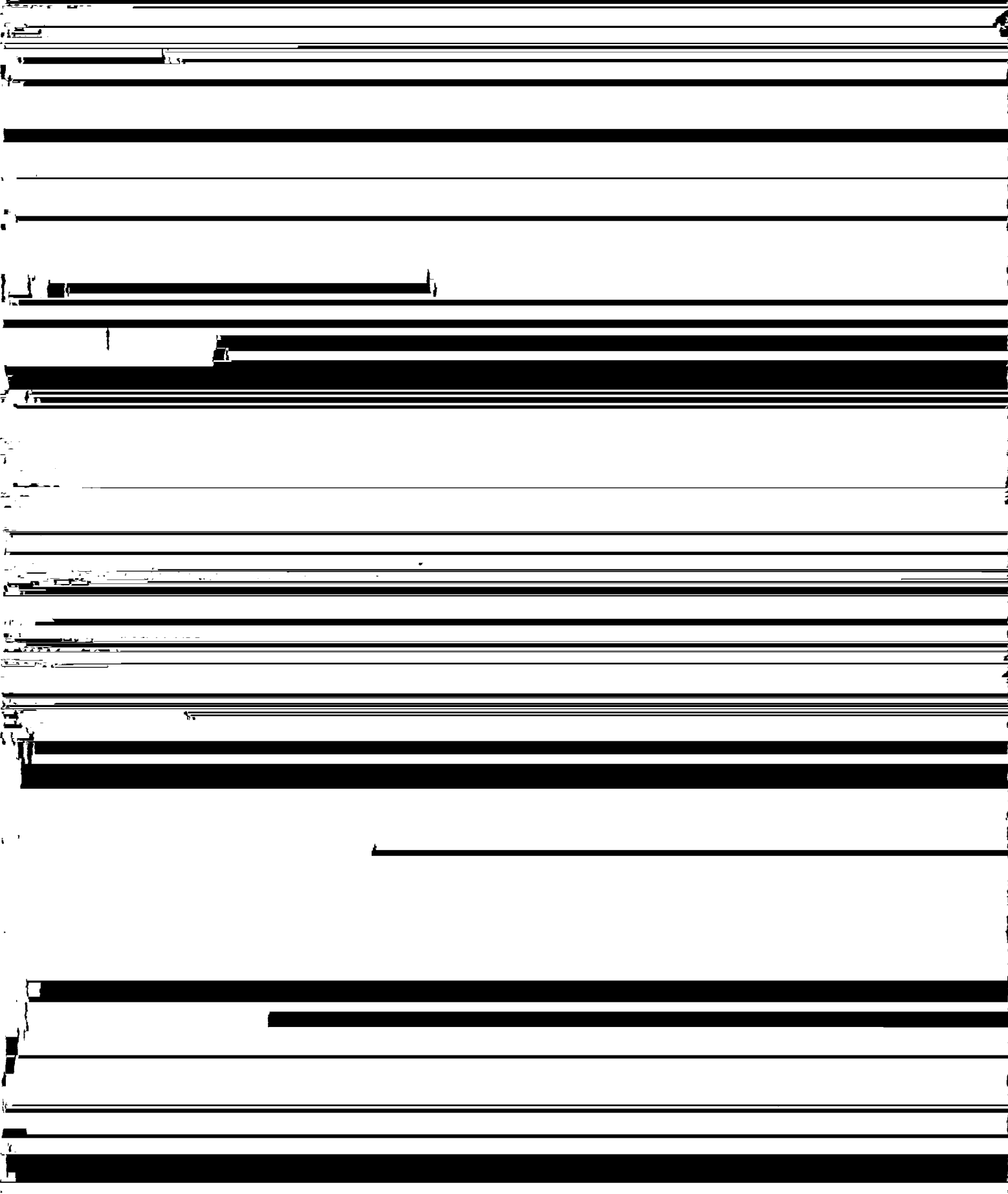
health plan is putting together its provider network, if one hospital is asking for what

appears to be a particularly high and unreasonable price, the health plan will look at its

exclude many hospitals for selective contracting to be prevalent. (See Haas-Wilson, Tr. 2459-60). Second, health plan testimony demonstrates that selective contracting is very prevalent in the Chicago area. (See Neary, Tr. 587-88 (Before the merger, One Health's selectivity in choosing hospitals for its network forced hospitals to compete harder for the health plan's business.); Mendonsa, Tr. 484, 485, 491 (Aetna contracts with about 88 out of a total of 110 hospitals in the Chicago area. Network composition is "critical" to

[REDACTED]

[REDACTED] (Mendonsa, Tr. 568-569, *in camera*). Similarly, in the late 1990s, PHCS eliminated the University of Chicago from its network when the hospital refused to lower its rates. (Ballengee, Tr. 155, 189-90). Similarly, United terminated its relationship with [REDACTED] in 2000.



camera).

Response to Finding No. 994:

Respondent's finding is incomplete and misleading. Unisys includes the

Response to Finding No. 996:

Respondent's finding is incomplete and misleading. The various, thin and after

the fact remains Defendants owe the usual "duty" owed by Deia in its

[REDACTED]

[REDACTED] } (Noether, Tr. 6107, *in camera*).

Response to Finding No. 997:

Respondent's finding is incomplete, misleading and irrelevant. As described in CCRFF 996, Bain utilized the word "leverage" in its merger integration advice to mean "strength" or "bargaining position." (See CCRFF 996). Whether and how Bain utilized leverage in other contexts is irrelevant. Indeed, Respondent claims that in RFF 996 that the term "leverage" had two different meanings. (See RFF 996).

Respondent's sole source for this finding is the testimony of Dr. Noether. Dr. Noether was qualified as an expert in this case in the fields of "industrial organization

[REDACTED] with particular emphasis in healthcare economics and antitrust" (Noether, Tr. [REDACTED])

Respondent's finding is incomplete, misleading and irrelevant. As described in CCRFF 996, Bain utilized the word "leverage" in its merger integration advice to mean "strength" or "prevailing position." (See CCRFF 996) Whether and how Bain utilized

leverage in other contexts is irrelevant.

999. Bain did not advise ENH that the Merger resulted in market power. HPH was really a non-issue to MCOs. So the "leverage" that ENH had with MCOs after the Merger was

experience); CCFF 1080-84 (PHCS experience); CCFF 1152-62 (One Health experience); CCFF 1204-10 (Aetna experience); CCFF 1281-88 (Unicare experience)).

1000 Similarly, the term "insurance" is defined in ERISA 1

power. Newman defined his use of the term "insurance" as "the business of assuming the risk of loss of property or life."

physicians making [Highland Park Healthcare, Inc.] indispensable to any major player in the managed care market.” (RX 367 at ENH DR 4205).

Response to Finding No. 1001:

Respondent’s finding is contradicted by other record evidence. Evanston’s reported use of the term “indispensable” was closely tied to some instances in the market

power context. For example, part of the “market influence” goal in the NH North proposed merger was to “capture 30-40% of key health plans” and achieve a level of “indispensability” (CX 301 at 13). Evanston also had a quality goal separate and apart

from “market influence.” NH North was to differentiate itself with “superior outcomes”

1983-2015, *in camera*). [REDACTED]

[REDACTED]

[REDACTED] (Ballengee, Tr. 166-69, 171; Mendonsa, Tr. 530, *in camera*).

3 Empirical Analysis Of Price Changes Does Not Show That The

Professor Debra Messner The Relative

This proposed finding is incomplete and misleading. { [REDACTED]

[REDACTED]

[REDACTED] (Baker, Tr. 4619-

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Baker, Tr. 4796-97, *in camera*).

[REDACTED]

[REDACTED] (Haas-Wilson Tr. 2614-15, *in camera*;
see also CCFF 600-608).

Dr. Baker himself found that outpatient prices increased more at ENH relative to
his control group than inpatient prices (CCREF 1004)

In any event, Dr. Baker, the sole source cited for this finding, lacked credibility.
(See CCFF 1742-1762).

[REDACTED] (Baker, Tr. 4642, *in camera*).
[REDACTED]
[REDACTED]
[REDACTED] (Baker, Tr. 4642-43, *in camera*).

Response to Finding No. 1006:

Complaint Counsel have no specific response.

1007. [REDACTED]
[REDACTED] (Baker, Tr. 4621, 4740, *in camera*). [REDACTED]
[REDACTED] (Baker, Tr. 4627, 20, 4755, *in camera*)

Response to Finding No. 1007:

Complaint Counsel have no specific response.

[REDACTED]

[REDACTED] (Amended Glossary of Terms at 4 April 22 2005)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Amended Glossary of Terms at 4, 6, 9, April 22, 2005)

[REDACTED]

[REDACTED]

[REDACTED]

The finding is irrelevant. All the results Dr. Haas-Wilson testified to at trial were reimbursement per case.

In any event, the sole source for this information is Dr. D. D. 1 1 1 1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Baker, Tr. 4633, *in camera*).

[REDACTED]

1010. [REDACTED] (Baker, Tr. 4635, *in camera*).

[REDACTED]

Response to Finding No. 1010:

This [REDACTED]

[REDACTED]

The finding is also irrelevant. { [REDACTED]

{ [REDACTED] } (CCFF 497-502).

In any event, the sole source for this proposed finding is Dr. Baker, who lacked credibility. (See CCFF 1742-1762).

1011. { [REDACTED]

Response to Finding No. 1011:

This proposed finding is incorrect. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Baker, Tr. 4739, 4786-87, *in camera*; RX 2040 at 4, *in*

camera). { [REDACTED]

[REDACTED] (See CCFF1742-1762). { [REDACTED]

[REDACTED]

The findings are supported by the evidence. The Court has reviewed the evidence and

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Baker Tr 4627 *in camera*)

credibility. (See CCFF 1742-1762).

1013. { [REDACTED]
[REDACTED] } (Baker, Tr. 4625-26, *in camera*). { [REDACTED]
[REDACTED] } (Baker, Tr. 4628, *in camera*).

Response to Finding No. 1013:

The cited source to the first sentence does not say what Respondent's finding claims. Dr. Baker never uses the terms wide variances in his answers, merely stating that the numbers are different. Complaint Counsel attempted to introduce the underlying tables that Dr. Baker was testifying about *but Respondents objected and Chief Judge*

McGuire upheld the Respondent's objection and refused to admit Dr. Baker's tables.
(See the Court's Order Denying Complaint Counsel's Motion for the Admission of Portions of Dr. Baker's Expert Reports Into Evidence dated May 10, 2005). It is

will therefore be objectively determined whether in fact the differences yielded

In any event, the sole source for this proposed finding is Dr. Baker, who lacked

credibility. (See CCFF 1742-1762).

1015. { [REDACTED] } (Baker, Tr. 4627-28, *in camera*).

Response to Finding No. 1015.

This proposed finding is irrelevant and misleading. { [REDACTED] }

{ [REDACTED] } (Hess, Wilson, Tr. 2518, 2524, 25, *in camera*; CCFF

535-579). { [REDACTED] }

{ [REDACTED] } (Baker, Tr. 4640-4643, *in camera*).

[REDACTED]

[REDACTED]

Discusses to [REDACTED] No. 1016

[REDACTED]

The finding is incomplete and misleading. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Haas-Wilson, Tr. 2500; Haas-Wilson, Tr.

2582-83, *in camera*).

[REDACTED]

Response to Finding No. 1017:

This proposed finding is irrelevant, incomplete and misleading. (See CCRFF 515

U.S. v. M. G. ...

... because they are based on developer's model to estimate whether ...

1020. Dr. Haas-Wilson reached this conclusion before doing any analysis of the claims
date and before reviewing deposition transcripts (Class. Wilson Tr. 2684-85)

Response to Finding No. 1020:

be potential explanations for the large post-merger price increase at ENH.” (Haas-

[REDACTED]

[REDACTED]

[REDACTED] (Noether, Tr. 6239-43 in
camera) [REDACTED]

1023. {

[REDACTED] (Haas-Wilson, Tr. 2545-46, *in camera*). For example, "Dr." Haas-Wilson did not consider the impact of mergers between MCOs
[REDACTED] (Haas-Wilson, Tr. 2688-89) [REDACTED]

(Haas-Wilson, Tr. 2743, *in camera*; see Section VII.D.2.c.vii).

[REDACTED]

[REDACTED]

[REDACTED] (Haas-Wilson Tr. 2510-11, 2518, *in camera*; CX 6279 at 3, *in*

camera; CCFF 465, 468).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Haas-Wilson, Tr. 2510-11, *in camera*; CX 6279 at 18-19, *in*

camera; CX 6282 at 6, *in camera*).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Haas-Wilson, Tr. 2549-50, *in camera*). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Noether, Tr. 6113, *in camera*).

Response to Finding No. 1025:

This proposed finding is incorrect. [REDACTED]

[REDACTED]

(Haas-Wilson, Tr. 2451-52). [REDACTED]

[REDACTED] (Haas-Wilson, Tr. 2732-34. *See* CCFF 394-487). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (CY 67 et al. *See also* CCFF 1416-1428 (discussing the market

market as inpatient services.)).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This is consistent with the finding by Dr. Baker that relative to Dr. Noether's

[REDACTED]

This finding is incorrect. {

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (See CCFF 497-502). {

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (CX 6279 at 7, *in camera*; CX 6279 at 11, *in camera*; CCFF 394, 398-403, 525-534).

The second half of this proposed finding does not make sense. {

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

1029. { [REDACTED]

[REDACTED] (Haas-Wilson, Tr. 2853, *in camera*).

Response to Finding No. 1029:

The finding is irrelevant. This proposed finding is irrelevant and incomplete and misleading. { [REDACTED]

[REDACTED] (Baker, Tr. 4659, *in camera*). Thus, Dr. Haas-Wilson and Drs. Baker and

Neither cleaned the data the same way.

1030. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(3) Dr. Haas-Wilson's Control Groups Are Not An Appropriate Basis For Measuring Relative Price Changes

[REDACTED]

[REDACTED] } (Haas-Wilson, Tr. 2697, *in camera*).
This was the case here. (Noether Tr. 5080-00)

Response to Finding No. 1031:

This proposed finding is incorrect and misleading. [REDACTED]

[REDACTED] } (Haas-Wilson, Tr. 2548, *in camera*; Noether, Tr. 5997).

Response to Finding No. 1032:

Complaint Counsel have no specific response.

1033. {

[REDACTED] } (Haas-Wilson, Tr. 2858-59, *in camera*). {

[REDACTED] } (Haas-Wilson, Tr. 2859, *in camera*).

Complaint Counsel have no specific response.

1034. {

[REDACTED] }
(Haas-Wilson, Tr. 2857, *in camera*).

Response to Finding No. 1034:

[REDACTED]

Response to Finding No. 1036:

The second sentence of the finding is incorrect. Dr. Noether's own "academic" control group that she and Dr. Baker used to compare price levels with ENH demonstrate the danger of an under-inclusive control group. Dr. Noether creates a control group that includes the most expensive hospitals in her data. (See CCFF 1914-1920)

those hospitals don't look a lot like ENH. (See CCFF 1912-1926). Then Dr. Noether excludes hospitals that have similar characteristics to ENH such as (1) being a major

[REDACTED]

(Hagg Wilson, Tr. 2542-40, *in camera*)

[REDACTED]

[REDACTED]

Complaint Council have no specifications

[REDACTED]

[REDACTED]

1038.

{ [REDACTED]

} (Noether, Tr. 5989; Noether, Tr. 6109, *in camera*). { [REDACTED]

[REDACTED]

{ (Baker, Tr. 4647, *in camera*). { [REDACTED]

[REDACTED]

} (Baker, Tr. 4647, *in*

[REDACTED]

camera).

This proposed finding is incomplete and misleading. There is no evidence of any systematic bias that would make the results from using Dr. Haas-Wilson's control groups invalid.. Dr. Haas-Wilson's control groups give the same results as Dr. Noether's control group when studying price changes. { [REDACTED]

{ [REDACTED] } (See CCFF 497-502).

her teaching control group met the COTH criteria.

1044. { [REDACTED]

[REDACTED]

1

[REDACTED] } (Noether, Tr. 6110-11, *in camera*).

Response to Finding No. 1044:

This proposed finding is incomplete and misleading. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } (Haas-Wilson, Tr. 2616, 2619-20, *in camera*).

1046. {

(Baker, Tr. 4694-95, *in camera*). {

(Baker, Tr. 4696, *in camera*)

Deposition Finding No. 1046.

The Court has reviewed the deposition of Baker, Tr. 4694-95, 4696, and has concluded that the deposition is admissible.

[REDACTED]

} (Baker, Tr. 4697, in

(summary)

Response to Finding No. 1047:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

} (CCFF

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(See CCFF 640-651¹ *in camera*).

Even Respondent's own expert found price increases at ENH after the Merger.

[REDACTED]

[REDACTED]

[REDACTED] (Baker, Tr. 4621, 4642-46, 4648, *in camera*).

1049 [REDACTED]

[REDACTED]

[REDACTED] (Baker, Tr. 4695-96, *in camera*).

[REDACTED] (Baker, Tr. 4695-96, 4742-43, *in camera*).

Response to Finding No. 1049:

This proposed finding is incorrect. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dep.)). (Blue Cross is "such a big player, there is no way we can have any ability to

[REDACTED]

The second sentence of this proposed finding is irrelevant. [REDACTED]

[REDACTED] (Haas-

Wilson, Tr. 2746, *in camera*). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(CCFF 573-574, 536-551).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Response to Finding No. 1055:

Complaint Counsel have no specific response.

1056. {

[REDACTED]

Response to Finding No. 1056:

Complaint Counsel have no specific response.

1057. {

[REDACTED]

1058. { [REDACTED] } (Haas-Wilson, Tr. 2830, 2832-33, *in camera*). { [REDACTED] }

{ [REDACTED] }
(Haas-Wilson, Tr. 2832-33, *in camera*).

Response to Finding No. 1058:

This proposed finding is incomplete and misleading. { [REDACTED] }

{ [REDACTED] } (Haas-Wilson, Tr. 2643, *in camera*; CCF 695). { [REDACTED] }

{ [REDACTED] } (CCFF 1747, *in camera*). { [REDACTED] }

[REDACTED] (CCFF 1750-1760). [REDACTED]

[REDACTED]

350

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (See CCFF 694-738; 742-745).

1059. One would have expected ENH's negotiated prices to rise above competitive

1 1-04 11-6-04 11-8-04 11-10-04 11-12-04 12-2-04 12-4-04 12-6-04 12-8-04 12-10-04 12-12-04

[REDACTED]

[REDACTED]

[REDACTED]

those other hospitals (See CCFE 1954 1000) Thus Dr. Neethan can only work here

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

providers being charged below equilibrium prices. (See CCFF 1983-2030; CCRFF 1060).

1062. Consequently, without considering price levels, it would be impossible to

the learning about demand theory. (Noether, Tr. 5989). An analysis of price levels allows differentiation between market power and learning about demand. (Noether, Tr. 5991).

(Baker, Tr. 4621, *in camera*).

Response to Finding No. 1062:

This proposed finding is incorrect for several reasons. First, in the first sentence,

Dr. Noether did not say that without considering price levels, it would be impossible to

This proposed finding is incomplete and incorrect. First, Respondent
mischaracterizes the testimony of Dr. Haas-Wilson. [REDACTED]

[REDACTED] (Haas-

Wilson, Tr. 2835 (emphasis added), *in camera*). [REDACTED]

[REDACTED] (See CCFF 694-740). [REDACTED]

[REDACTED] (See CCFF 1762-2021)

1064. [REDACTED]
[REDACTED] (Haas-Wilson, Tr. 2835, *in camera*; Noether,
Tr. 5990).

Response to Finding No. 1064:

This proposed finding is incorrect for several reasons. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(See CCRFF

1059).

4 Empirical Analysis of Data from the Survey of Income and Health

[REDACTED]

[REDACTED]

2 Dr. Neether's Control Groups Are An Appropriate Basis To

[REDACTED]

[REDACTED]

[REDACTED]

Dr. Noether relied on that industry standard or agreement in classifying her 18 hospitals

“academic” control group. (Noether, Tr. 5993). The selection of high priced hospitals for inclusion in her “academic” control group raised the average price that she was

comparing to ENH. (CCFF 1818-1820). Conversely, the exclusion of lower priced hospitals from Dr. Noether’s “academic” control group also raise the average price that Dr. Noether was comparing to ENH.

1066 Dr. Noether developed her control groups by looking at various characteristics of

Louis Weiss, Northwest Community, Resurrection and St. Francis) met only one of Dr. Noether's criteria. (Noether, Tr. 6214). Case-mix index alone would not have been an effective way to select academic control group hospitals. (Noether, Tr. 6212)

[REDACTED] (RX 1912

at 44, *in camera*). [REDACTED]

[REDACTED] (CCFF 1977)

Louis Weizsäcker's major teaching hospital (CCFF 1954 55) [REDACTED]

average treated more complex cases than Eysenck (CCFF 1977 75) [REDACTED]

Evanston in terms of staffed beds of the eighteen on Dr. Noether's list of hospitals. (RX 1912 at 60). [REDACTED]

[REDACTED] (CCFF 1886-88, *in camera*). [REDACTED]

[REDACTED]

[REDACTED] (CCFF 1889, *in camera*). Dr. Noether

identified Deaconess Medical Center as the hospital in the same geographic

market as ENH, (Noether, Tr. 5928), an exercise that was intended to identify firms that are sufficiently close substitutes as to constrain each other competitively. (Noether, Tr.

[REDACTED]

The conclusion to be drawn from these facts is that there would be no bias by including these five hospitals in a comparison group to Evanston, but that excluding them

Discovering the means in which Northwest Community and Documentation

Response to Finding No. 1070:

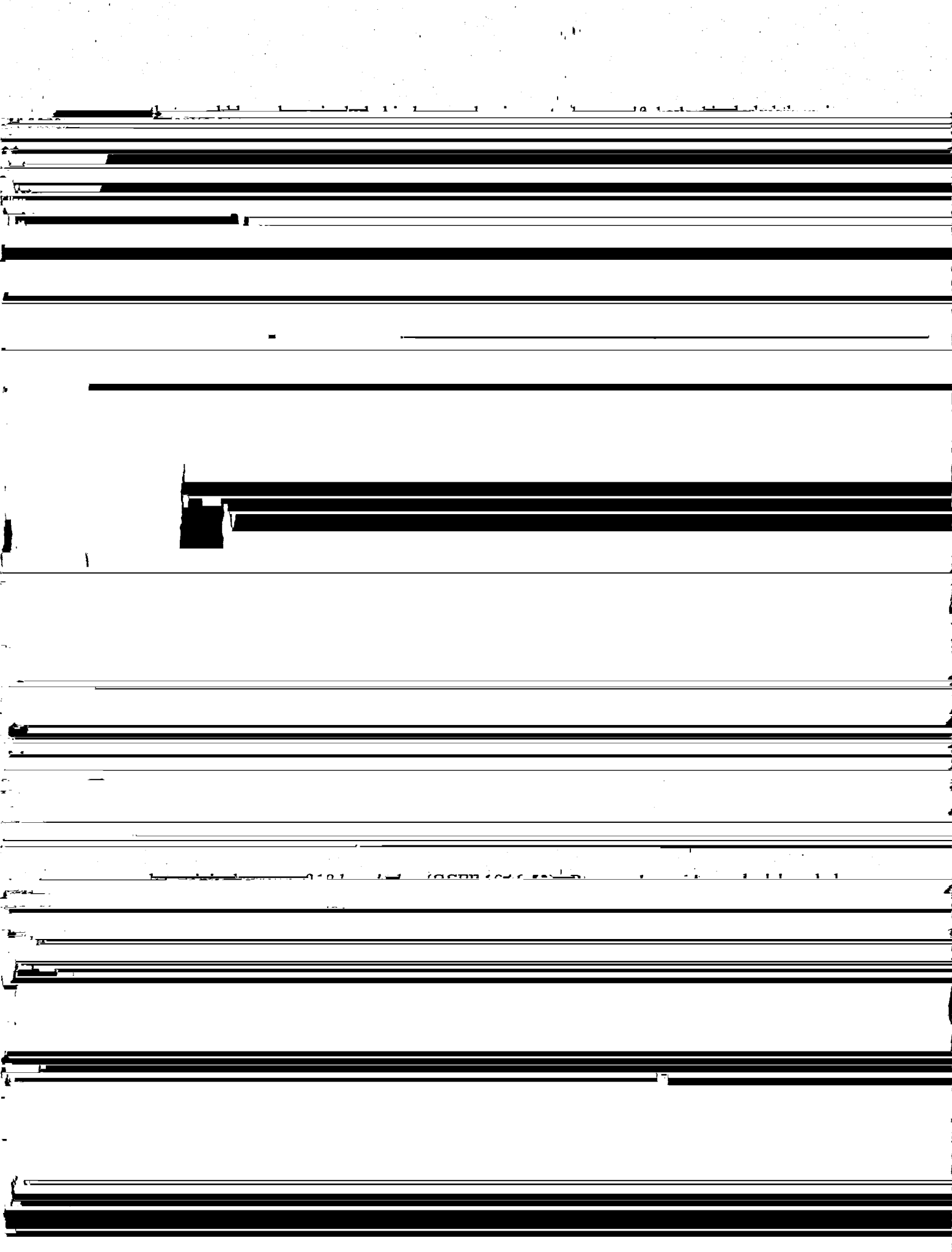
Complaint Control Unit

(Noether, Tr. 5997).

The finding is vague, incomplete and misleading. The finding is vague and

misleading because it does not identify the hospital's MCO-
[REDACTED]

Hospital. ENH. Lovola. Advocate Lutheran General. Northwest Community. Rush. University of



the general acute care hospitals in the Chicago PMSA. (Haas-Wilson, Tr. 2548) In her non-merging control group, Dr. Haas-Wilson included all the hospitals in the Chicago PMSA that were not involved in merger with another hospital between 1996 and 2002.

[REDACTED]

[REDACTED] (CCFF 1819, *in camera*).

ii. **Dr. Noether's Characterization Of ENH As A Major Teaching Hospital Is Consistent With MCO Views**

1078. A document authored by Ballangee at PHCS as far back as August 28, 1995, identified the Eversten Hospital Corporation, which included Cleveland, Ohio, as a

"advanced teaching" hospital. (*Compare* Ballangee, Tr. 189 *with* RX 107 at GWL 859).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Foucre, Tr. 1114 *in camera*). [REDACTED]

[REDACTED] (RX 1208 at UNCENH

3380), [REDACTED] (Foucre, Tr. 1129

in camera). In fact, Ms. Foucre was asked which hospitals in Chicago met her definition

of major teaching hospitals and she identified Loyola University Medical Center

[REDACTED]

[REDACTED]

University of Chicago, Rush Presbyterian, and Northwestern Memorial. She explicitly

Response to Finding No. 1080:

The finding is misleading and distorts what Dr. Haas-Wilson testified to. The

characterization of a hospital as an teaching hospital is different from characterizing a

hospital as appropriately being included in Dr. Noether's "academic control group" (See

[REDACTED]

(Haas-Wilson, 2706 *in camera*).

Response to Finding No. 1082:

The finding is incorrect. {

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Haas-Wilson, Tr. 2703-04 *in camera*). If obstetrics is an service that

makes up a large portion of a hospital's services, then a hospital is most similar to other

hospitals for which obstetrics makes up a large portion of services.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } (Haas-Wilson, Tr. 2698-2703 *in camera* (discussing DX 7031)).

1087. { [REDACTED] } (Noether, Tr. 6001; Haas-Wilson, Tr. 2876, *in camera*). This definition, however, conflicts with the Complaint,

[REDACTED]

[REDACTED] } (Haas-Wilson, Tr. 2876, *in camera*) (emphasis added). { [REDACTED]

[REDACTED] } (Haas-Wilson, Tr. 2882, *in camera*). { [REDACTED]

[REDACTED] } (Haas-Wilson, Tr. 2879-80, *in camera*).

Response to Finding No. 1087:

criticism of Dr. Noether's control group on this point is { [REDACTED]

[REDACTED] } (Haas-Wilson, Tr. 2701-

02 *in camera* (discussing DX 7058)

1088. In any event, solid organ transplants and extensive burn treatments are a very small portion – .8 of 1% – of the total number of services provided at any of the academic control group hospitals (Noether Tr 6002)

Response to Finding No. 1088:

The finding is irrelevant. Because quaternary services require very specific human capital, and also very specialized physical the hospitals that provide quaternary services are thought of as different than hospitals that do not. (Haas-Wilson, Tr. 2701).

That Northwestern Memorial, Lovola, Rush-Presbyterian-St. Luke's, and University of

Chicago are different in the types of cases they treat can be seen by the difference in case mix index at those hospitals and at ENH. (Haas-Wilson, Tr. 2699-2700 (discussing DX 7057).

1089. For example, as a percentage of total discharges, organ transplants at the University of Illinois may account for as little as eight-tenths of 1%. (Dorsey, Tr. 1473)

Response to Finding No. 1089:

The finding is irrelevant. The percentage of cases that are organ transplants is irrelevant. (See CCRFF 1088). Moreover, the University of Illinois is one of the

irrelevant.

1090. Finally, Evanston Hospital at one point did provide extensive burn services, but elected to terminate that program because demand for these types of services was significantly

2009-10).

Response to Finding No. 1090:

The finding is irrelevant. While the DNLL - CC and

Response to Finding No. 1093:

The finding assumes facts that are not supported by the cited source. There is no

[REDACTED] } (Noether, Tr. 6049-50, *in camera*).

Response to Finding No. 1097:

The finding is incorrect. The commercial payer data was available for five payers.

(Haas-Wilson, Tr. 2499) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } (Haas-Wilson, Tr. 2576 *in camera*)

1098. [REDACTED]

Response to Finding No. 1100:

Accounting Committee

camera), *in camera*; Haas-Wilson, Tr. 2571-73 (discussing DX 7020 at 2, *in camera*), *in camera*; Haas-Wilson, Tr. 2584-85 (discussing DX 7020 at 2, *in camera*) *in camera*.

Haas-Wilson, Tr. 2630-31 (discussing DX 7018, *in camera*), *in camera*).

1103. [REDACTED] (Noether, Tr. 6053, *in camera*).

[REDACTED] Noether, Tr. 6053, *in camera* [REDACTED]

[REDACTED] (Baker, Tr. 4642, *in camera*).

1105. [REDACTED]

[REDACTED] (Noether, Tr. 6099, *in camera*) [REDACTED]

[REDACTED] (Noether, Tr. 6099, *in camera*). [REDACTED]

[REDACTED]

Response to Finding No. 1105:

The finding is incorrect. Because the entire text of ENII was more than

1107. { [REDACTED] } (Noether, Tr. 6056-6057, *in camera*).

Response to Finding No. 1107:

Complaint Counsel have no specific response.

1108. { [REDACTED] } (Noether, Tr. 6057, *in camera*). { [REDACTED] } (Noether, Tr. 6057, *in*

Response to Finding No. 1108:

The finding is incorrect. Because { [REDACTED] }

{ [REDACTED] }, (Baker, Tr. 4797 *in camera*), and { [REDACTED] } (Dr. Haas-Wilson, Tr. 2612-15 *in camera*),

never calculated the average reimbursement across all managed care organizations from

the IDPH Universal Data Set. { [REDACTED]

[REDACTED]

[REDACTED] } (Haas-Wilson, Tr. 2526-30 *in camera*).

c. Dr. Noether's Empirical Analysis Confirms That The Learning About Demand Theory Applies In This Case

1110. { [REDACTED]
[REDACTED]
[REDACTED] }

(Noether, Tr. 6060, *in camera*; RX 1912 at 73, *in camera*).

Response to Finding No. 1110:

The finding is incorrect. All of Dr. Noether's conclusions about empirical

analysis confirming the learning about demand theory are invalid because she relied on an

in the industry. (See CCRFF'99, 1065).

1112. [REDACTED]

Response to Finding No. 1112:

The finding is incorrect. All of Dr. Noether's conclusions about empirical analysis confirming the learning about demand theory are invalid because she relied on an inappropriate and biased control group to compare price levels. (See CCFF 1814-1940).

for including outpatient services in the same product market as inpatient services is the

claim that managed care plans trade off the prices of inpatient and outpatient services

accepting higher inpatient prices for lower outpatient prices. (Attachment T, 5009)

[REDACTED] } (Noether, Tr. 6065, *in camera*; RX 1912 at 147,
in camera). { [REDACTED] } (Noether,

Response to Finding No. 1115:

The finding is incorrect. All of Dr. Noether's conclusions about empirical

RX 1912 at 150, *in camera*).

Response to Finding No. 1116:

This finding is misleading. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (RX 1912 at 147, *in camera*).

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Haas-Wilson Tr. 2646 (discussing DX 7047) Dr. Noether

referred to that testimony by Dr. Haas-Wil

inappropriate and biased control group to compare price levels. (See CCF 1814-1940).

1119. [REDACTED]

[REDACTED] (See CCF 1814-1940) [REDACTED]

1121. { [REDACTED]

Response to Finding No. 1121:

[REDACTED]

[REDACTED] (Haas-Wilson, Tr. 2727-28). Moreover, all of Dr. Noether's conclusions about empirical analysis confirming the learning about demand theory are invalid because she relied on an inappropriate and biased control group to compare price levels. (See CCFF 1814-1940).

[REDACTED]

Response to Finding No. 1122:

Complaint Counsel have no specific response.

1123. { [REDACTED]
[REDACTED]
[REDACTED] } (Noether, Tr. 6073, *in camera*).

Response to Finding No. 1123:

The finding is misleading. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } (Haas-Wilson, Tr. 2646 (discussing DX 7047), *in camera*; Baker, Tr.

4746, *in camera*). Even just looking at the rates in the contracts that Evanston and

Highland Park had purchased in early about one third of Evanston's

[REDACTED]

[REDACTED] (RX 1912 at 28 *in camera*).

iii. **Humana**

1125. [REDACTED] (Noether, Tr. 6075, *in camera*; RX 1912 at 65, *in camera*).

Response to Finding No. 1125:

The finding is incorrect. All of Dr. Noether's conclusions about empirical analysis confirming the learning about demand theory are invalid because she relied on an

The finding is incorrect. All of Dr. Noether's conclusions about empirical

analysis confirming the findings about demand that were included in the publication are

inappropriate and biased control group to compare price levels. (See CCFF 1814-1940).

In addition, Dr. Noether's use of the terms "non-units" and "academic" to describe her

[REDACTED] (Haas-
Wilson, Tr. 2646 (discussing DX 7047) *in camera*; Baker, Tr. 4746 *in camera*).

iv. United

1131. [REDACTED]
[REDACTED] (Noether, Tr. 6081,
in camera; RX 1912 at 68, *in camera*).

Response to Finding No. 1131:

The finding is incorrect. All of Dr. Noether's conclusions about empirical

inappropriate and biased control group to compare price levels. (See CCFE 1814-1940)

inappropriate and biased control group to compare price levels. (See CCFF 1814-1940).

Moreover, the finding is inconsistent with the calculations done by Dr. Baker. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Baker Tr 4726 *in camera*)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Baker Tr 4739 *in camera*)

[REDACTED]

1133. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

hospitals offer differentiated products, the prices of which can vary for any number of reasons. (Hess Wilson, Tr. 2402). Dr. Neether argued that hospitals were offering a

discriminated price list (Hess Wilson, Tr. 5010) [redacted]

[REDACTED]

01 1 0004 1 1015 100

Response to Finding No. 1134:

The finding is incorrect. All of Dr. Noether's conclusions about empirical analysis confirming the learning about demand theory are invalid because she relied on an

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Baker, Tr. 4739 *in camera*)

1136. [REDACTED]

[REDACTED] (Noether, Tr. 6093, *in camera*). [REDACTED]

[REDACTED] (Noether,

Response to Finding No 1136

[REDACTED]

[REDACTED]

[REDACTED]

d. Professor Baker's Empirical Analysis Confirms That The Learning About Demand Theory Applies In This Case

1137 [REDACTED]

[REDACTED]

The finding is misleading. Dr. Baker did not select the hospitals that went into the "academic" control group and did not measure Dr. Baker's [REDACTED]

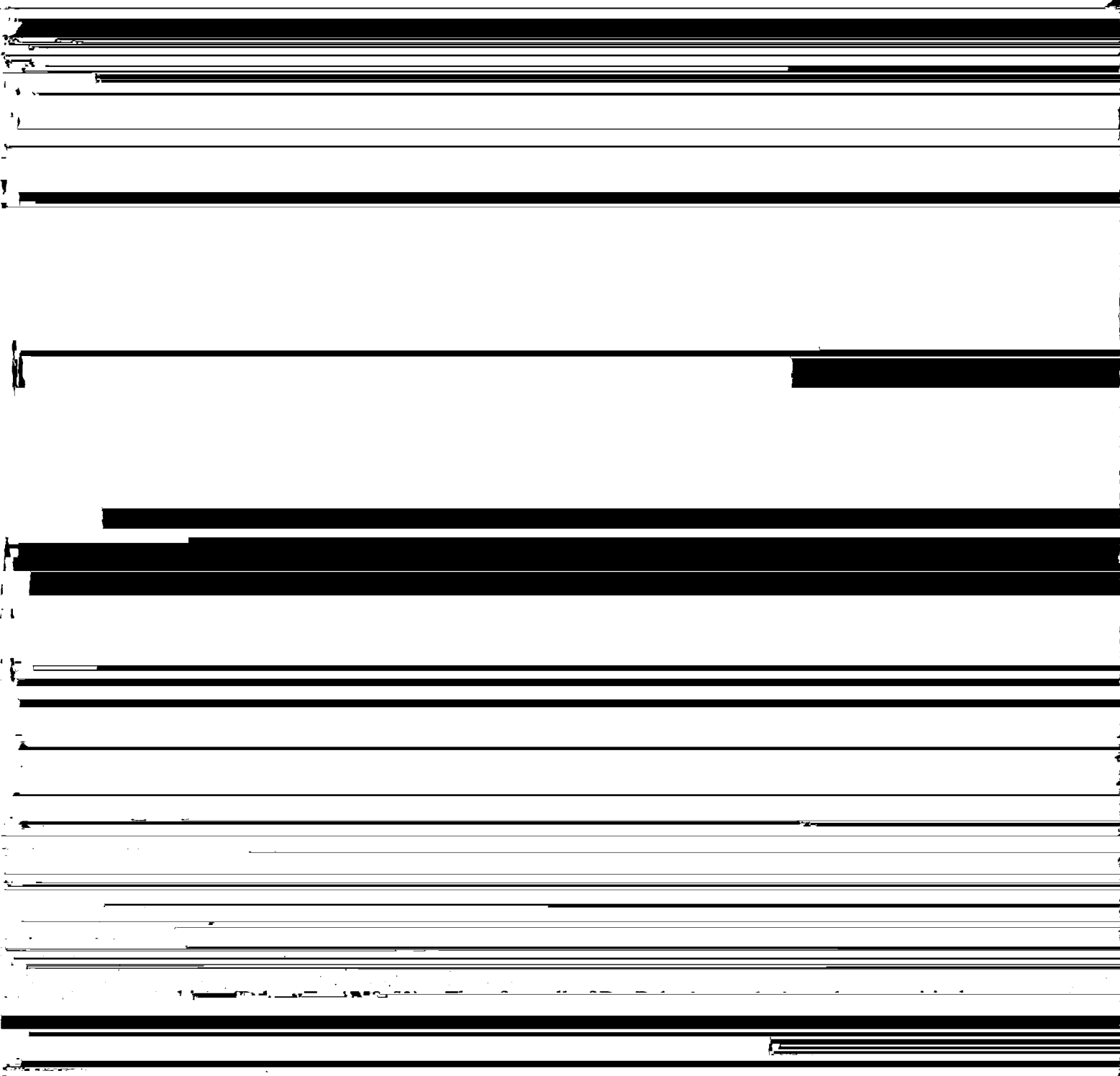
The finding is misleading. Dr. Baker did not select the hospitals that went into the

"epidemic" control group and did not select the hospitals that went into the

hospitals from the control group. He simply took the control group from the

Response to Finding No. 1140:

The finding is misleading. Dr. Baker did not select the hospitals that went into the “academic” control group and did not know why Dr. Noether excluded any particular



[REDACTED] (Baker, Tr. 4662-63, *in camera*).

[REDACTED]

[REDACTED] (Baker, Tr. 4730, *in camera*).

Response to Finding No. 1142.

The finding is misleading. [REDACTED]

[REDACTED]

[REDACTED] (Baker, Tr. 4688-89 *in camera* (emphasis added)). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1143. { [REDACTED] } (Baker, Tr. 4685, *in camera*). [REDACTED]
[REDACTED] } (Baker, Tr. 4663, *in camera*). { [REDACTED] }
[REDACTED] } (Baker, Tr. 4663, *in camera*).

Response to Finding No. 1143:

The finding is misleading. (*See* CCRFF 1142). Moreover Dr. Baker lacks credibility. (CCFF 1742-62).

[REDACTED] and did not know why Dr. Neather excluded any particular hospitals from the control [REDACTED]

and did not know why Dr. Noether excluded any particular hospitals from the control

Therefore, all of Dr. Baker's conclusions about empirical analysis confirming the learning

1147. { [REDACTED]

Response to Finding No. 1147:

The cited source does not say { [REDACTED]

1150.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

two control groups are meaningless. Dr. Noether's use of those terms is not consistent with others in the industry. (See CCRFF 99, 1065). Moreover Dr. Baker lacks credibility. (CCFF 1742-62).

1152. { [REDACTED]

(Baker, Tr. 4674, 4681-82, 4699, *in camera*).

Response to Finding No. 1152:

The finding is misleading. Dr. Baker's use of the terms "community" is consistent with others in the industry.

Response to Finding No. 1153:

The finding is misleading. Dr. Baker did not select the hospitals that went into the

hospitals from the control group, he simply took the control group. Dr. Neather says to

1814-1940). Moreover, since Dr. Baker simply used Dr. Noether's "academic" and

"community" names of the time...

ii. Professor Baker's Empirical Analysis Overstates ENH's

Post-Merger Price Increase Because That Analysis Does Not Measure Quality-Adjusted Prices

1156. { [REDACTED]
[REDACTED] } (Baker, Tr. 4629-30, 4799, *in camera*).

Response to Finding No. 1156:

The finding is incorrect. { [REDACTED]

(Baker, Tr. 4799-4800). The only expert in this case that compared quality changes at

Response to Finding No. 1158:

The finding is incorrect. The relevant question is not whether quality improved at ENH, but whether quality improved at ENH relative to the control group, which it did

(See GCFR 1156, Message Dr. Debra Laska, 6/20/02, GCFR 1742, 6/20/02)

1159. [REDACTED]

Response to Finding No. 1161:

expert for the Complaint Counsel. (Haas-Wilson, Tr. 2586-88). Dr. Romano found no

Responsible person. (Tr. 11-12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000)

DV 7933 at 2). Dr. Romano was the only expert in this case that

plan that pays for the hospital services. Thus, the person who chooses the hospital at

which to obtain hospital services is not the same as the person who chooses the hospital

(CCFF 1670).

In this case, when ENH raised its prices, only one managed care plan, One Health/Great West, tried to drop the hospitals (reduce quantity). It was not successful so

VIII. MERGER IMPACT ON QUALITY

A. Definition And Measurement Of Healthcare Quality

1. Definition Of Quality In Healthcare

1165. Quality in healthcare is defined as the degree to which health services for individuals and populations increase the likelihood of desired health outcomes and are consistent

Response to Finding No. 1167:

For the reasons explained in CCRFF 1165, Complaint Counsel refers the court to

CCRFF 1170 for an explanation of

[REDACTED]

with process measures, are more useful than structural measures

2. Measuring Healthcare Quality

1171. Experts in the field of healthcare quality assessment investigate three different classes of quality measures to determine if there has been a quality improvement. The three different categories of health care quality measurement are structure, process and outcomes. (Chassin, Tr. 5144-45; Romano, Tr. 3251).

Response to Finding No. 1171:

Complaint Counsel have no specific response.

~~1172. Structural measures reflect specific characteristics or features of a healthcare~~

delivery organization. Structural factors are enabling factors. They set the background. They

1174. Outcome measures reflect what ultimately happens to patients as a result of the care process: Do they leave the hospital alive? Are they disabled? Is their functional status

Response to Finding No. 1174:

Complaint Counsel sees with this finding

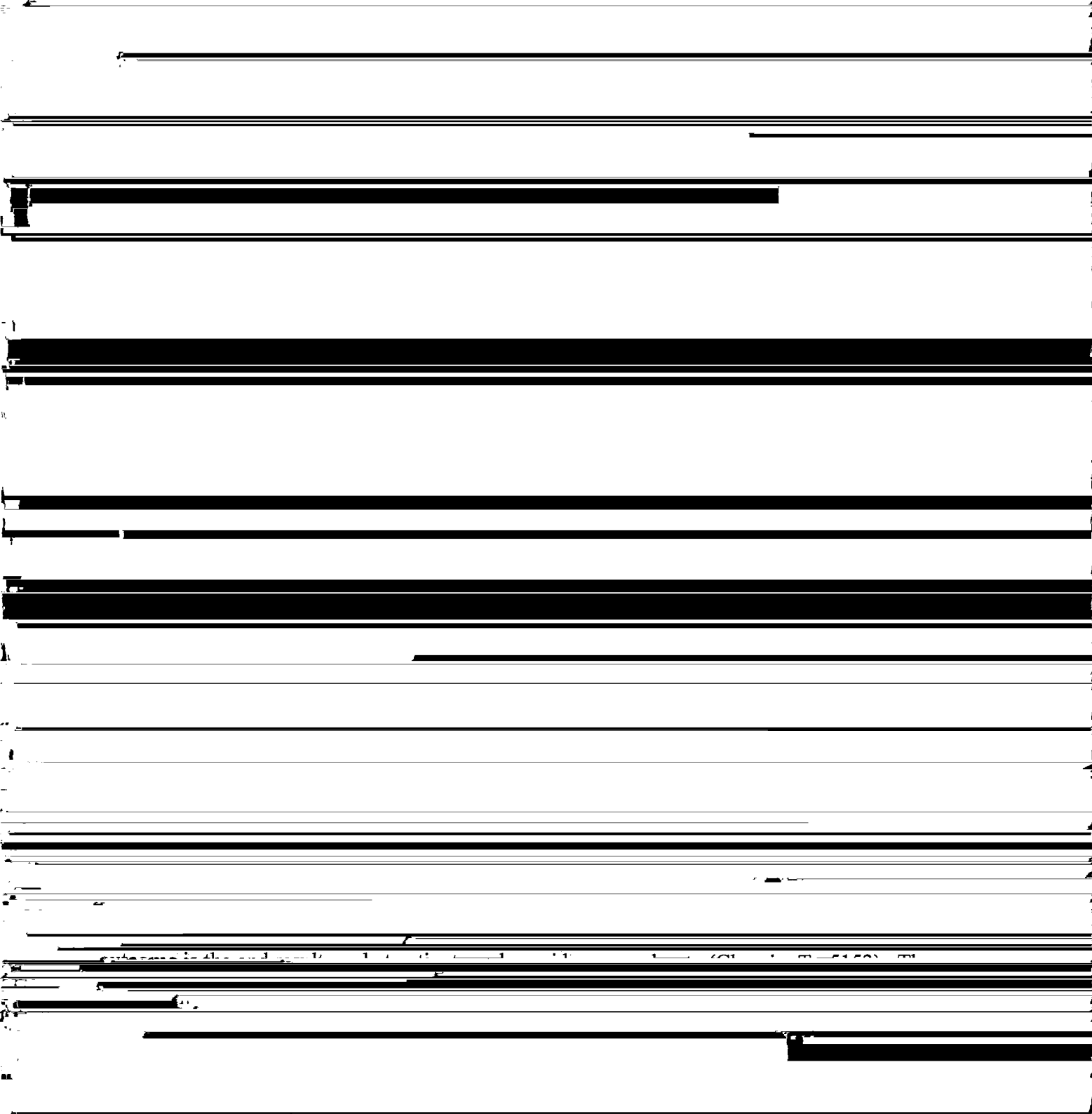
a. Strengths And Weaknesses Of Quality Measures

1175. Each one of the classes of measures described above has its uses, its strengths and

Response to Finding No. 1177:

Complaint Counsel have no specific response.

1178. Outcome measures are very attractive, but they too have their strengths and weaknesses. The most attractive part of looking at outcome measures is that it is a...



quality as “[t]he best possible clinical *outcomes* for our patients; [s]atisfaction for all of our many customers; [r]etention of talented staff; [s]ound financial performance.” (CX 2052 at 5 (emphasis added); O’Brien, Tr. 3554-55). Patients care about what outcomes they get when they go to a hospital. (O’Brien, Tr. 3556; Chassin, Tr. 5153, 5461). ENH measures outcomes in its own quality assessments. (O’Brien, Tr. 3555-56).

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } (Romano, Tr. 3066, *in camera*). { [REDACTED]

[REDACTED]

[REDACTED] } (Romano, Tr. 3066, *in*

camera). { [REDACTED]

[REDACTED]

[REDACTED] } (Romano, Tr. 6333-34, *in camera*; *See also*, CCFF 2122-2132).

Outcome measures are useful in measuring quality of care, particularly when they are correlated with process measures. (Romano, Tr. 2988-89). In contrast, structural measures are insufficient by themselves to measure quality because they tell us very little about the care that is actually provided to patients. (Romano, Tr. 2988).

1180. Another limitation of using outcome data to measure hospital quality is that some

outcomes occur so rarely that they are not useful as quality measures. (Romano, Tr. 3254). For example, the occurrence of neonatal mortality at a low-risk delivery service such as HPH is so rare that it would not be meaningful to compare changes in that outcome over time to evaluate

treatment are so delayed after treatment is given that it is impossible to use them in deciding whether quality changes happened as a result of a merger. (Romano, Tr. 3254). For example, for

testified only that "that may be true for some procedures." (Romano, Tr. 3254). This

theoretical limitation does not affect Dr. Romano's actual conclusion from the measures

he used.

1181. Another important aspect in trying to use outcomes to assess hospital quality is the

[REDACTED] (Romano, Tr. 3208-09, *in camera*).

[REDACTED]

[REDACTED] (Romano, Tr. 3208-09, *in camera*). [REDACTED]

[REDACTED]

[REDACTED] (Romano, Tr. 3208-09, *in camera*)

[REDACTED] Finally another important weakness of outcome measures is that

[REDACTED]

[REDACTED]

[REDACTED]

processes or structures, which are, by and large, under the control of the provider giving care — outcomes are susceptible to a lot of influences, and many of the influences that produce certain

[REDACTED]

Response to Finding No. 1185:

Complaint Counsel agree with this finding.

1186. Specifically, in its accreditation process, JCAHO considers and rates a hospital on approximately 1,200 explicit aspects of hospital activities, which are called elements of

properly be used to evaluate healthcare quality. (Chassin, Tr. 5145-46). It follows that to employ
quality measures in an accepted and accurate manner

proven high degree of validity. (Romano, Tr. 3252).

Response to Finding No. 1188:

On the page cited by Respondent, Dr. Romano testified that to employ quality

measures in an accepted and accurate manner, the quality measures should have

74. See also, e.g., CCF 2105-2112).

1190. An estate planner by Dr. Chappin and J. L. L. D. D. (C. L. L.)

Counsel's quality of care expert), confirms that for an outcome measure to be valid as a measure of quality, it has to be tied to a process or structure of care that could be measured.

1101. For a structural measure to be valid, it must have a causal relationship to a desired

health outcome. The same test also applies to process measures. (Chassin, Tr. 5146).

Response to Finding No. 1191:

Respondent never bothered to explain which measures used in the case were valid and which were not. Dr. Romano explained why each and every measure he relied upon was valid. Respondent's vagueness, and Complaint Counsel's precision, on this issue is explained in CCRFF 1188 above.

1194. To establish a relationship between structural measures, several other

considerations must be weighed. It is always desirable to have clinical research evidence that

Respondent never bothered to explain which measures used in the case were valid and which were not. Dr. Romano explained why each and every measure he relied upon was valid. Respondent's vagueness, and Complaint Counsel's precision, on this issue is

B. Dr. Chassin Employed Accepted Methodology For The Study Of Healthcare Quality

1196. Dr. Chassin employed a multi-faceted strategy to measure the changes in

otherwise flawed in their own right. These flaws are discussed in more detail at CCDFE

1211.

1198 Further to the extent Dr. Romano raised any questions in his reports about quality

visit and interviewing processes. (Chassin, Tr. 5160). This review led to an iterative process through which Dr. Chassin made further specific requests for more documents and data and conducted additional interviews and another site visit. (Chassin, Tr. 5160-61).

Response to Finding No. 1201:

Complaint Counsel have no specific response.

1202. Dr. Chassin reviewed at least a dozen deposition transcripts before writing his'

because I would be talking to people who were themselves ENH employees," (Romano Tr. 2980).

1294 Dr. Chassin also conducted 24 formal interviews of health care workers and

administrative leaders who were present at IHH at Emerson Hospital either before or after the

opinions. Rather, it focused largely on administrative, physician, and nursing leadership at ENH. (CCFF 2151-2155).

1297. The interviews consisted of a series of

was consistency among all the sources of information he was considering and to see if those

I'm familiar with in health services research." (Romano, Tr. 3021).

Second, Dr. Chessin's qualitative techniques were flawed in several respects

including: (i) the failure to clearly describe his sampling strategy, (ii) the failure to formally interview people actually in the front lines of providing care, (iii) the failure to seek out alternative views or individuals having contradictory opinions, and (iv) the

Response to Finding No. 1213:

Complaint Counsel have no specific response.

1214

Response to Finding No. 1222:

Complaint Concerning [REDACTED]

1223. Dr. Chassin was admitted into the first class of the National Academies of Science. He received the Founders' Award from the American College of Physicians in 1998. [REDACTED]

provided" (C) T. 5150 5151 D. C. 11/1/16

improvement and alleged quality problems with the product. The company is currently

- Mark Newton, who testified that the quality of care at Highland Park

(Newton, Tr. 376).

[REDACTED] (RX 412 at ENHL PK 017794, *in camera*).

• The Everston Hospital Board of Directors, which voted at a February 22

{ [REDACTED] }; (Romano, Tr. 3136-37, *in camera* (discussing DX
441 at 70, *in camera*)) { [REDACTED] } { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

camera)).

{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Romano, Tr. 3130-3150)

[REDACTED]

[REDACTED]

[REDACTED]

1228. Second, in addition to remedying deficiencies, ENH also made substantial improvements in quality in a number of other clinical service areas after the Merger. (Chassin, Tr, 5138). Most of those improvements required ENH to integrate its clinical and management

after the merger, most could have been implemented without the merger. For example,

this expansion the list has now shrunk with the removal of the critical cases of least

attack care.

1230. Many of these improvements were brought about through a substantial infusion of capital to upgrade aging, defective and outmoded equipment and facilities, and to increase accessibility to expanded facilities.

[REDACTED]

[REDACTED] } (RFF 1231, *in camera*). { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } (Romano, Tr. 3093, *in camera*).

Deposition of [REDACTED] on [REDACTED]

Page [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

national and Illinois trends and HPH's strong pre-merger organization – a divestiture would be unlikely to erode them. (See, e.g., Romano, Tr. 2998, 3003-04 (discussing national trend); Newton, Tr. 377, 291-92 (discussing some pre-merger areas of strength)).

[REDACTED]

[REDACTED]

[REDACTED] } (Romano, Tr.

3075, *in camera*). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } (Romano, Tr. 3075, *in camera*). (See also CCFE

2560 (noting that proposed order would require that HPH retain improvements)).

[REDACTED]

[REDACTED] } (Romano, Tr. 3193, *in camera*). These conclusions

are discussed in more detail in Section X.A. below.

a. The Merger Improved Quality Of Care In HPH's Ob/Gyn Department

i. Overview

1233. One of the quality problem areas that existed at HPH before the Merger was

Ob/Gyn services. (Cheppin Tr. 5101; Sneath Tr. 2240). ENH's improvements to UDL's

[REDACTED]

[REDACTED]

before the merger. (See CCFF 2188-2201). Pre-merger HPH had a comprehensive

[REDACTED]

[REDACTED]

[REDACTED] (Romano, Tr. 3188-89, 3224, 3226-

[REDACTED]

[REDACTED] (Romano, Tr. 3127 (discussing DX 7033 at 19, *in camera*), *in camera*; CCFF 2143).

1234. ENH improved these Ob/Gyn services after the Merger at a cost of more than \$750,000, annually. (Silver, Tr. 3782-83, 3848-49).

Response to Finding No. 1234:

This finding is irrelevant. Complaint Counsel do not dispute the ENH's charges

[REDACTED]

Response to Finding No. 1236:

This finding is incomplete. Before the merger, HPH's fetal diagnostic center was

staffed by perinatologists from [redacted] and [redacted].

These perinatologists were from Evanston Hospital and [redacted].

This finding is irrelevant as to the discussion regarding LDRP's quality of care

before and after the merger. For a discussion on that topic see COBEE 1227. It should

also be mentioned that the LDRP was an innovative program developed by HPH as a part
of its "Centers of Excellence" for women's health. AL 11-17-02-001-02-1000-1000-1000

(CX 6265, *in camera*)

at 25, *in camera*).

1240. Dr. Chassin also relied on the trial testimony of Dr. Silver, who is the ENH Chairman of the Department of Ob/Gyn. (Chassin, Tr. 5161; Silver, Tr. 3767). Dr. Silver attended medical school at Northwestern University and completed his residency and fellowship training in Ob/Gyn and maternal fetal medicine, respectively. Dr. Silver is Board certified in Ob/Gyn with a subspecialty certification in maternal fetal medicine. (Silver, Tr. 3759-60). Dr.

(CX 6265

Response to Finding No. 1241:

Complaint Counsel do not disagree

1242. In addition, as Chairman of the ENH Ob/Gyn Department, Dr. Silver is directly responsible for the review of physician practice and reacting to and adjudicating any quality assurance issues that arise. Before the Merger, however, he would not have had any such responsibility for obstetricians at LHH. (Silver Tr. 2776)

Complaint Counsel do not disagree

Response to Finding No. 1245:

Complaint Counsel do not disagree.

1246 Dr. Silver, as the Division Director of Maternal and Fetal Medicine at the

Hospital before the Merger, got to know a majority of the practitioners at HPH through the Illinois Perinatal Network. (Silver, Tr. 3774). The relationship through the Illinois Perinatal Network, before the Merger, was extremely circumscribed, however, and it was limited to

between Evanston Hospital and HPH before the Merger was that Evanston Hospital was a state-designated Regional Perinatal Center for HPH. As a Level Two hospital, HPH sent its high-risk expectant mothers to Evanston Hospital, a Level Three hospital, for care. That

Response to Finding No. 1249.

This finding is incomplete. Before the merger, HPH's fetal diagnostic center was

staffed by Evanston Hospital perinatologists who specialized in high-risk pregnancies.

(Krasner, Tr. 3750).

iii. **HPH Ob/Gyn Department Had Serious Problems Before The Merger**

detail the selective and biased picture painted by Respondent of the ACOG report. (See

e.g., CCRFF 1239 (noting failure to cite ACOG finding that physician nurse relationships likely to improve with time); CCRFF 1237 (noting ACOG praise for Ob/Gyn physical facilities)). But regardless of whether Dr. Chassin accurately characterized it, that report

[REDACTED]

[REDACTED] (RX 324 at ENHL PK 029763, *in camera*; RX 365
at ENHRS003456, *in camera*).

1252. [REDACTED]

Response to Finding No. 1255:

This finding is misleading and incomplete. One of the submitted DV 009 has



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find a document discussing possibilities for improvement. Quality should be indeed be a

systematic review and quality of some historical times, and 1. 1. 11

in delivering high quality patient care). (See also RX 324 at ENHL PK 029769, in camera (

1258. {

} (RX 324 at ENHL PK 29754, in camera). {

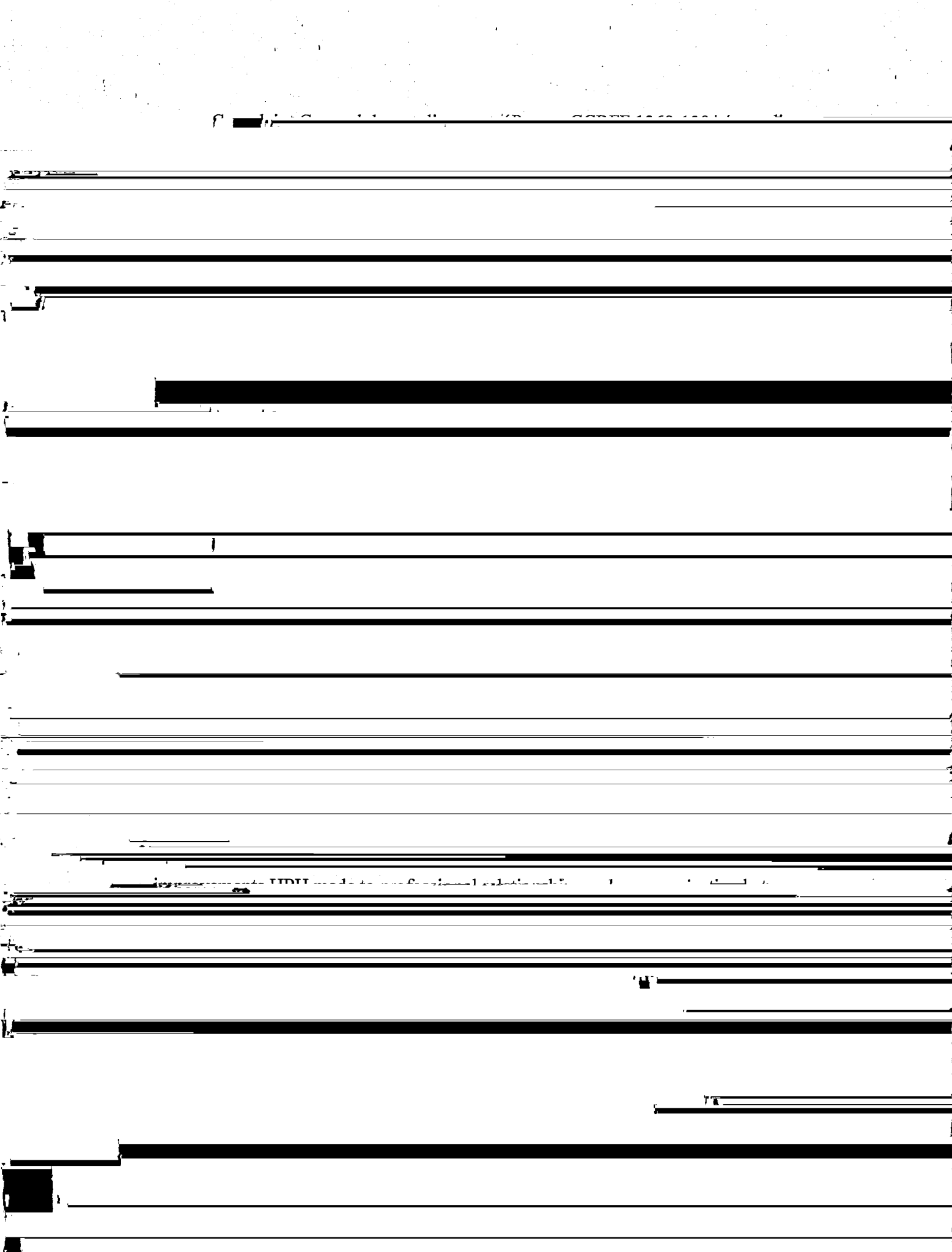
(RX 324 at ENHL PK 29754, in camera)

Response to Finding No. 1258.

This finding is incomplete and misleading. (See CCRFF 1368-1384 (regarding improvements HPH made to professional relationships between nurses and physicians in the Family Birthing Center before the merger)).

1259. {

} (Chassin, Tr. 5198; RX 324 at ENHL PK 29773, in camera). This constituted



Response to Finding No. 1263:

Complaint Counsel do not disagree.

1264. The Joint Commission includes several dimensions of hospital leadership as part

of its accreditation process. (BY 2006-2007-54) - JCI leded effective

3157; RX 324 at ENHL PK 29769-70, *in camera*).

Response to Finding No. 1265:

This finding is misleading and inaccurate. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (CX 6265 at 18, 21, *in camera*; Romano, Tr. 3158, *in*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (CX 6265 at 5, *in camera*).

1267. While the CHRPP report acknowledged the existence of a chain of command policy at HPH, it did not, however, comment on the degree to which HPH's chain of command

policy was in fact implemented as working effectively with that intent. The testimony

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1269. [REDACTED]

Tr. 5203; RX 324 at ENHL PK 29730-47, *in camera*).

Response to Finding No. 1269:

This finding is misleading and incomplete. Dr. [REDACTED]

problematic physicians and aggressively dealt with adverse events. (CCRFF 1420-1427).

For example, the OP quality review committee successfully [REDACTED]

(Silver, Tr. 3781, 3857-58).

1272. For the second trimester abortions, there was a concern that the physician

to a physician deciding to perform any operative procedure based on that diagnosis, or that diagnosis alone.

This citation also demonstrates the fallacies in Respondent's anecdotal methodology. Recognizing that the CHRPP report documents great strides made by

UDH in DEF 1996. Respondent... thinking that it was

not as thorough as the ACOG report. But in this finding Respondent relies upon the

iv. **ENH Improved Quality Of Care At HPH's Ob/Gyn Department After The Merger**

(1) **ENH Expanded Obstetrician Coverage At HPH After The Merger**

1276. In 2001, shortly after becoming Chairman of the Ob/Gyn Department, Dr. Silver made a definitive response to the problem of inadequate nighttime obstetrician coverage in

Response to Finding No. 1276:

Complaint Counsel do not disagree. As Complaint Counsel stated earlier, ENH

1278. ENH implemented the in-house coverage program at the HPH campus because it was an issue of safety for women. (Silver, Tr. 3785).

Response to Finding No. 1278:

This finding is misleading. (See CCRFF 1256 (

[REDACTED]

[REDACTED]

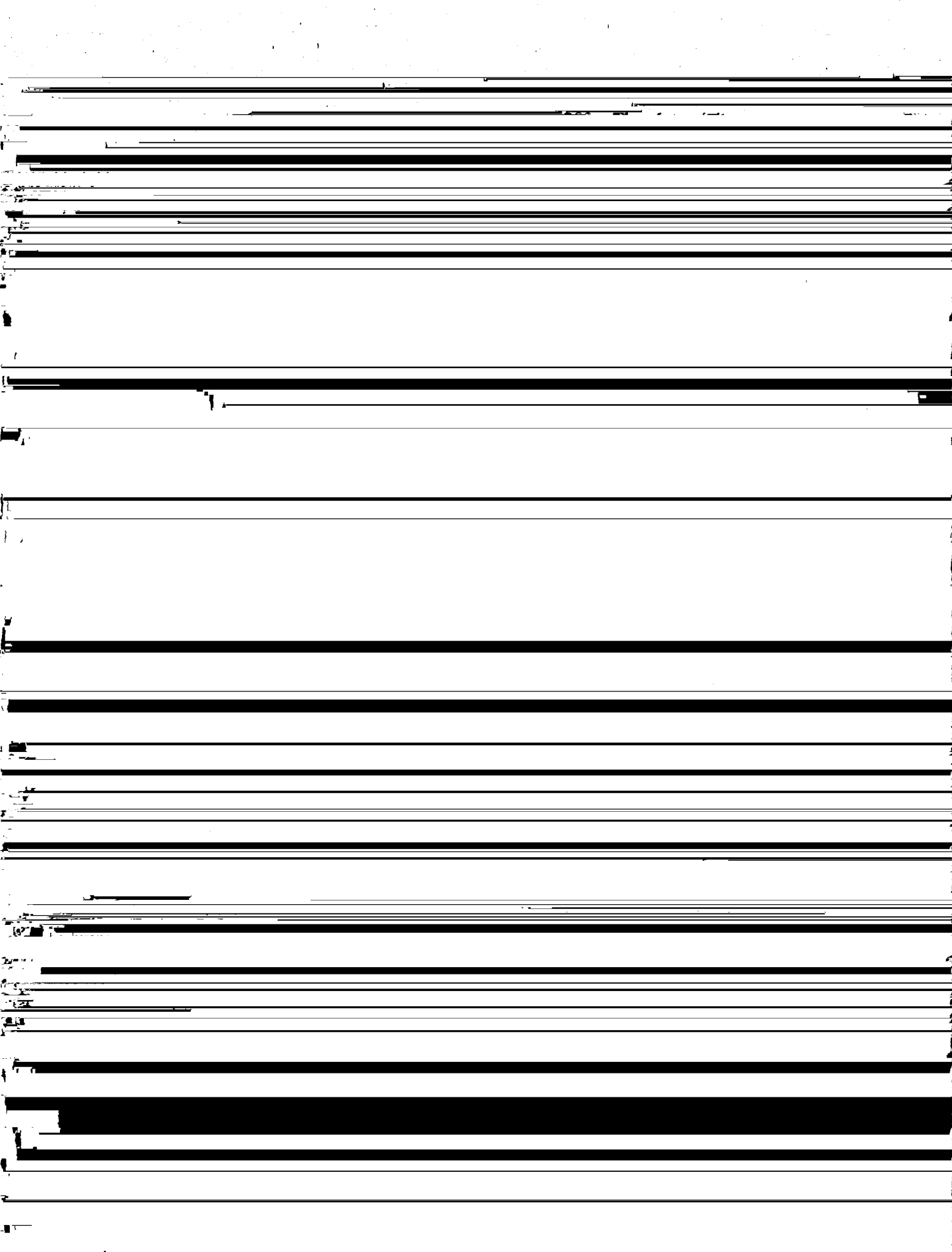
[REDACTED]

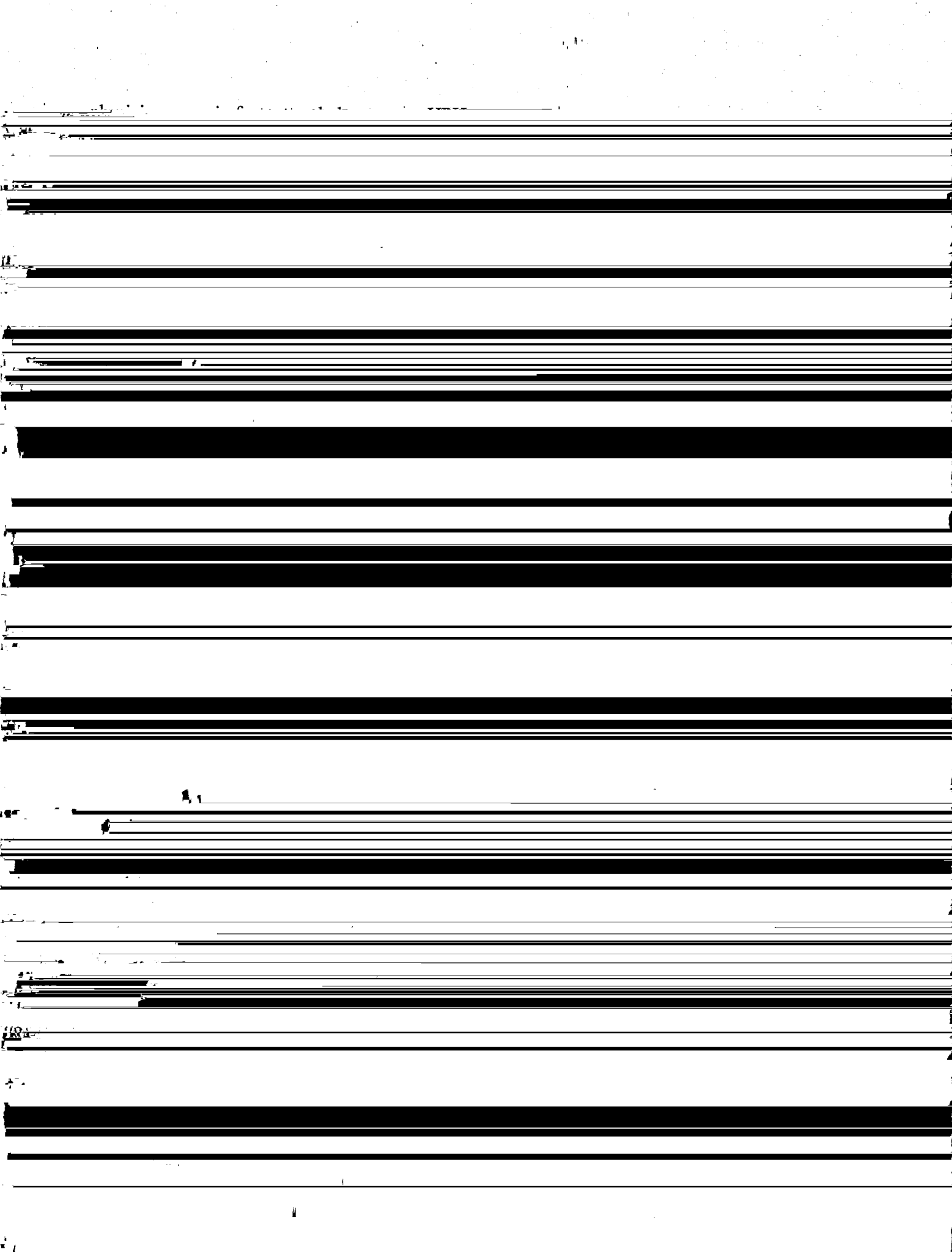
[REDACTED]

[REDACTED]), *in camera*).

amount without the merger. (See CCFF 2440-2443):

1280. The in-house coverage is provided by a full-time attending obstetrician who is physically present at LPLI from 10:00 a.m. to 7:00 p.m. daily. 11-2011-03-0300





program is not merger specific).

1287. { [REDACTED] } (Chassin, Tr. 5585; RX 657 at ENHL PK 29812, *in camera*; RX 324 at ENHL PK 29709, *in camera*). { [REDACTED] } (RX 657 at ENHL PK 29812, *in camera*; Chassin, Tr. 5585; Romano, Tr. 3390).

Response to Finding No. 1287:

This finding is incomplete. { [REDACTED] }

above explains why in-house OB coverage is not merger specific. (See CCRFF 1256

(HPH had the financial wherewithal to implement an in-house OB coverage program as a stand-alone entity.)).

[REDACTED]

[REDACTED] COPY 657 of ENHII [REDACTED]

PK 29812, *in camera*).

1290. The implementation of in-house coverage had a positive influence on the nursing staff at HPH by helping them to be more confident in providing care.

[REDACTED]

structural quality improvement even in the absence of customer data. (Deming, T. 2000)

Deming, T. 1993

Response to Finding No. 1294:

This finding is misleading and [REDACTED]

[REDACTED] (CX
6265 at 25, *in camera*).

- (3) **ENH Improved HPH's Ob/Gyn Leadership And
Quality Assurance Program After The Merger**

Response to Finding No. 1297:

This finding is misleading and irrelevant. (See CCRFF 1255, 1296 (pre-merger

IPIL disclosed information about the company's financial condition and performance.

12

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] } (Romano Tr. 3132-33, 3451, *in camera*).

1300. By installing a full-time department chair, ENH corrected the problem of lack of

This finding is irrelevant and misleading. These changes are not merger specific.

For example if EPH were a stand-alone entity it could also continue the policy of

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

proper specificity of this particular protocol, or any of the OD protocols. ENLI did not

need to invest in any equipment or construction of new facilities to publish clinical protocols for HPH physicians. (Silver, Tr. 3847-48). The induction of labor protocol was developed because it was an important subject nationwide, and it was based on evidence "in literature and best practice" (Silver, Tr. 2902-2907).



[REDACTED] (Romano, Tr.

3168-69, *in camera*; see also O'Brien, Tr. 3560-62. See also CCRFF 1305; CCRFF

1462-1463 (discussing implementation of ENH critical pathways and comparison with

pre-merger HPH care plans)).

compare ENH's preoperative program to any national benchmarks. (Silver, Tr. 3852).

Also, Respondent has not explained how this program is merger specific. It was not necessary for ENH to construct buildings or invest in equipment to add the program to HPH. (Silver, Tr. 3847-48). If the merger had not occurred, ENH could still have implemented the preoperative review program at Evanston Hospital and Glenbrook

Tr. 2923-24; see also CCEE 2417-2425 (discussing lack of merger specificity of

supporting a link between the program and patient outcomes, and Respondent has not shown the program is merger-specific. (See CCRFF 1311).

1314. { [REDACTED] } (Silver, Tr. 3889-90, *in camera*). { [REDACTED] } (Silver, Tr. 3890, *in camera*).

Response to Finding No. 1314:

This finding is misleading. (See CCRFF 1311 (concluding that Respondent's

characterization of { [REDACTED] } is misleading)).

1315. { [REDACTED] }

supporting a link between the program and patient outcomes, and Respondent has not shown the program is merger-specific. (See CCRFF 1311).

1317. { [REDACTED] } (Silver. Tr 3836-37. Silver

Tr. 3298, *in camera*). { [REDACTED] }
[REDACTED] b. 603 T. 2008 2017 19 [REDACTED] BY 2022 [REDACTED] BY 2024 [REDACTED]

1319. Dr. Silver's addition of the preoperative gynecologic surgical review program is a major quality improvement because it prevents unnecessary surgery.

[REDACTED]

2097 for a more detailed discussion of patient outcomes relating to OB/Gyn services).

{ [REDACTED]

[REDACTED] } (Romano, Tr. 3230-32, *in*

camera). { [REDACTED]

[REDACTED] } (Romano, Tr.

[REDACTED]

help obstetricians at ENH select the appropriate delivery method – forceps or vacuum when performing an operative vaginal delivery. (Silver, Tr. 3815; RX 1416 at FNHI, PK 54656-60).

Response to Finding No. 1324:

This finding is irrelevant. (See CCRFF 1303 (the OB protocols are not merger

specific). See also CCRFF 1301 (6 [REDACTED]

}), *in camera*).

1325. Having a successful vaginal delivery is more common with forceps than with vacuum methods and thus the associated Cesarean section rate would be lower. (Silver, Tr. [REDACTED]

Complaint Counsel do not disagree. (But see CCRFF 1321 and CCFF 2089-2097

{ [REDACTED]

[REDACTED], *in camera*).

1327. { [REDACTED]

[REDACTED]

[REDACTED]

{ [REDACTED] (Chassin, Tr. 5418, *in camera*). { [REDACTED]

[REDACTED]

(Silver, Tr. 3825; Chassin, Tr. 5419, *in camera* (discussing DX 7037-002)). Physicians in the department are appropriately very selective of which patients undergo an operative vaginal delivery. (Silver, Tr. 3826).

Response to Finding No. 1327:

C. 1110 11 15 (B. CCRFF 1321 1327

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

Q 2007 08 01 0000 0000

1331. { [Redacted]

[Redacted]

Response to Finding No. 1331:

This finding is incomplete and misleading. { [Redacted]

[Redacted]

measures). Furthermore, the changes instituted in HPH's OB department could have been implemented without the merger. (See CCFF 2417-2425).

vi. **Dr. Romano's Undue Reliance On Administrative Data To Evaluate HPH's Obstetrical Service Is Invalid**

1334. The indicators that Dr. Romano used to analyze obstetrical services at the ENH hospitals were not comprehensive. (Romano Tr. 3305). Dr. Romano conceded that the _____

indicators for high trauma, third and fourth degree perineal lacerations, neonatal mortality and _____

[REDACTED]

[REDACTED] } (Romano, Tr. 6317-18,

in camera}).

1336. { [REDACTED]

[REDACTED]

[REDACTED] } (Chassin, Tr. 5416, *in camera*). { [REDACTED]

[REDACTED]

Response to Finding No. 1336:

[REDACTED]

complexity and severity of illnesses of hospitalized patients. (Chassin, Tr. 5230).

Complaint Counsel do not disagree.

1339 Effective nursing services have exemplary leadership are focused on developing

autonomous nursing practices and encourage collaborative participation with physicians and

also CCFF 2179-2185). In a post-merger letter to ENH's CEO, Linda Morris, an HPH

k

registered nurse for 18 years (Krasner, Tr. 3688-89). Krasner is the Clinical Coordinator for the Nursing Resource Team, the Staffing Office and IV Therapy Team for HPH. (Krasner, Tr.

practiced at several hospitals across the Chicago area, was hired at HPH as the Clinical Nurse Manager for the Family Diabetes Center in 1997. She was manager of the Center for Diabetes Center

Heidi Krasner has not delivered patient care since she last worked at the HPH Family Birthing Center. Furthermore, she has no way of knowing how patient outcomes at HPH have changed since the merger. (Krasner, Tr. 3743-44).

ii. HPH's Pre-Merger Nursing Services Needed Improvement

1344 Key elements of effective nursing were absent from HPH before the merger.

Response to Finding No. 1344:

This finding is inaccurate. HPH offered good nursing services before the merger, and was steadily improving in nursing before the merger. (CCE 2166-2178). It had a

390-91; Spaeth, Tr. 2116; Krasner, Tr. 3753; CX 98 at 2). Heidi Krasner helped

implement some of those recommendations before the merger, which included increased

fetal monitoring nurse education. (Krasner, Tr. 3753-54). { [REDACTED]

[REDACTED] } (Romano, Tr.

3155-56, *in camera*). { [REDACTED]

[REDACTED] (CCFF 2174-2176, *in camera*).

physician orders instead of being partners in care. (Chassin, Tr. 5232; RX 925 at ENHL PK 51687).

Response to Finding No. 1346:

This finding is misleading. The document criticizing nursing culture that is cited

4- Finding: RX 005 ... 11 ... 12 0000

period of years hereby become merged

1249 Message to the People: District of Columbia, 1971-1972

administration was concerned with how the problems with high nursing vacancy rates and nursing turnover would effect nursing staffing and quality of care provided to patients.

(RX_938 at ENHF F35 000317)

Ms Krasner with the approval of HPH management successfully filled most of

the nursing vacancies at LIDH before the merger. (K T 2740) D. C. 1

to concerns with the nurse vacancy rate that were present after the merger. (O'Brien, Tr. 3531, 3533-34; RX 938 at ENHE F35 317. *See also* CCRFF 1350).

1353 To decrease nurse vacancy, HDU needed to recruit and hire new nurses. [REDACTED]

Response to Finding No. 1354:

Again, the cited document proves the opposite of what ENH says. On the page

recommends salary increases in 1999 to solve that problem. (RX 450 at ENH DR 003479). This belies ENH's claim to have solved the problem only with the merger.

██████████ } (Krasner, Tr. 3702; Newton, Tr. 513-14, *in camera*). But agency nurses are not as effective with respect to patient care as nurses who are on staff. Because agency nurses are temporary, they lack institutional familiarity with the hospital, its policies, or its physicians. (Krasner, Tr. 3702-03; RX 657 at ENHL PK 029811). Further, the skill set and abilities of agency nurses are unknown before they are brought in to staff the hospital because

Birthing Center at HPH. (Krasner, Tr. 3702, 3721-22). This constant turnover caused vacancy

Response to Finding No. 1357:

This finding is misleading. (See CCRFF 1350 (

Complaint Counsel do not disagree

1361. Nurses also must have critical thinking skills to be active and engaged and function at a high level when caring for patients. (Class: TN 5027) VIII

nurses these important skills, it creates an environment in which they cannot alert physicians

[REDACTED]

at ENHL PK 0151851, *in camera*).

1363. According to documented evidence, physician leaders, quality improvement

[REDACTED]

Response to Finding No. 1365.

This finding is misleading. (See CCRFF 1344, 1362 (discussing the
improvements in training and skills...

of nursing skill and training at HPH after the merger)).

Relationships Before The Merger

1368. HPH had problems before the Merger with nurse/physician relationships. (Chassin, Tr. 5233).

Response to Finding No. 1368:

This finding is inaccurate and misleading. { [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (CX 6265 at 21, *in camera*). { [REDACTED]

[REDACTED]

[REDACTED] Q2Y 1247 - [REDACTED] BY [REDACTED]

051851, *in camera*. See also CCRFF 1363).

1369. ACOG, which sets guidelines for care of Ob/Gyn patients, made a site visit to

[REDACTED] (CCRFF 1368). The problems with Dr. Chassin's interviewing methodology are discussed in CCF 2149-2163.

1370. [REDACTED]

[REDACTED] (RX 324 at ENHL PK 29710, *in camera*). According to Krasner, this was an understatement. (Krasner, Tr. 3738).

Preparation to Finding No. 1370

[REDACTED]

[REDACTED]

This finding is misleading and incomplete. It is dated 1/1/1999.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

which also complimented LIDL's two merger bidding letters

[REDACTED]

nurse/physician relationships both before and after the merger)). { [REDACTED]

[REDACTED]

[REDACTED] (Ankin, Tr. 5036-96, 5103-05, *in camera*; Harris, Tr. 4201-99; 4418-28, *in camera*; Rosengart, Tr. 4435-4566; 4578-4580, *in camera*).

1373. The nursing culture at HPH was passive in that the nurses simply carried out physician orders instead of being partners in care. This passive behavior and lack of

professionalism displayed by [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

HRH did not... 721

Response to Finding No. 1379:

This finding is misleading. (See CCRFF 1368-1369 (discussing positive nurse/physician relationships before the merger). See also CCRFF 1378 (discussing the professionalism of HPH's medical staff before the merger)). This is also another example of ENH's anecdotal approach. There are any number of "extreme" examples of nursing

[REDACTED]

[REDACTED] (CX 411 at 1, *in remota*) While never justifiable, such

incidents, in the case of HPH, hardly speak to a need for a hospital to merge with another entity to prevent bad behavior from reoccurring. Rather, they point to a need to analyze

[REDACTED]

assertiveness among nurses in providing patient care))

process that spanned a period of years (Chassin Tr. 5478-80). The above cited findings

make clear that this "evolution" began in earnest at pre-merger HPH and was still continuing several years into the merger.

1297

aware of and was proactively addressing those issues pre-merger. (See e.g. CCREF

1344-1346, 1369, 1373-1374). The pre-merger time period presented by ENH begins

with Merck's listing in 1997 and continued until the end of 2000.

about two and a half years. But here, and in RFF 1386, Respondent asks the Court to consider a post-merger time period of about five years, to the end of 2004. Complaint

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

not explained why LIDL could not have been merged with ENH before the merger.

merging with ENH.

1392 There was no centralized Nursing Resource team at LIDL before the Merger.

1395. As a result of the changes in compensation, staffing and the Nurse Resource

more easily and recruit nurses than before the Merger. (See CCRFF 1389-1393)

Response to Finding No. 1395:

This finding is irrelevant and misleading. (See CCRFF 1389-1393). Also, HPH

the number and type of training classes available pre-merger and compare them to what

achieved absent the merger. (*See, e.g.*, CCRFF 1344-1345, 1362-1363, 1368, and 1397).

Moreover, ENH's reliance on RX 1445 belies its contention in numerous other

~~findings that Press Ganey~~

reports to HPH's President, Marv O'Brien, extensive information about "patient

satisfaction" as measured by Press Ganey scores, indicating that Ms. O'Brien, and ENH, view Press Ganey as a useful measure of quality.

1402. Nurses at all levels at HPH were trained to prepare for and begin the cardiac

program at HPH added considerable value to each of the nurses in the ICU. (Ankin, Tr. 5065). For example, the increased abilities of HPH nurses gained from caring for critically ill heart patients also translated to care they provide to other patients in the ICU. (Rosengart, Tr. 4483-84).

Response to Finding No. 1402:

These opportunities would like, have been available without the merger, since

HPH had extensive pre-merger plans to develop a cardiac program.

Response to Finding No. 1404:

Respondent's finding is incomplete. (See COPE 2294-2402 for information.)

how HPH could have implemented an intensivist program similar to the one it has now
without merging with ENH. See also COPE 2272-2278^h for information on how the

merger with ENH has not significantly improved the quality of HPH's ICIT. The pres

This finding is irrelevant and misleading. There is no reason why HPH could not have hired advanced practice nurses after the merger. (See, e.g.,(Newton, Tr. 430-31; CX 545 at 3; CX 1055 at 2).

1407. As of 2003, ENH physicians praised ICU nurses and the quality of care they provided to patients.

51621. Further improved critical thinking and practice of nurses at ENH. 11

collaboration pre-merger, but has also taken, and been recognized for having taken, substantial steps to improve it. (See CCRFF 1362, 1363, 1368, and 1373).

1409. Vital to the improvements in nursing services at HPH was the improved nurse/physician relationships that were enhanced in terms of communication and teamwork.

LPH would not have achieved a quality improvement in nursing unless management was able to establish

Insofar as this change of governance relates to nursing, Complaint Counsel have

no specific response. Complaint Counsel have noted elsewhere that the existence of paid department chairs creates its own conflict issues in the context of physician discipline.

(See CCRFF 1432).

1412. ENH also made changes in nursing leadership at HPH after the Merger. (O'Brien, Tr. 3537; Neaman, Tr. 1354). For example, a new Vice President of Nursing was hired. (O'Brien, Tr. 3537).

Response to Finding No. 1412:

This finding is misleading. (See CCRFF 1368, 1379 (discussing the relationship between physicians and nurses at HPH both before and after the merger)).

The Merger Substantially Improved HPH's Quality of Care

Program

i. Overview

1414. [REDACTED]
[REDACTED] (Romano, Tr. 3449, *in camera*).

Response to Finding No. 1414:

Complaint Counsel do not disagree.

1415

(Romano, Tr. 3142, *in camera*; CX 6296 at 10-22, *in camera*). { [REDACTED]

[REDACTED]

[REDACTED] } (See, e.g., RX 204 at ENHL PK 031140, *in camera*; RX 346

at ENHL PK 024709, *in camera*; RX 414 at ENHL PK 039155, 039164, *in camera*).

New Millennium") is a good example of an [REDACTED]

Tr. 2120-2152). In the wholly concrete cases where Dr. Brown did not

administrative data be analyzed in detail under that date was that on 11/11/79.

improved after the merger.” (Romano, Tr. 3139, 3152).

CCRFF 1416 and 1421.

Respondent's claim that "HPH had a pattern of finding no opportunities for improvement" misstates the evidence and demonstrates the lack of credibility of Respondent's position. Dr. Chassin's conclusion of a "pattern of finding no opportunities for improvement" was based on "qualitative evidence" consisting of "information that is in written minutes", which "tends to be an incomplete summary of the discussions that occurred." (Romano, Tr. 3140). Moreover, Dr. Chassin did not review the facts of the individual cases where no opportunity for improvement was identified, and therefore

1423. {

} (RX 1772 at ENHL PK 17957; *in camera*). {

} (Chassin, Tr. 5222-23; RX 324 at ENHL PK 29713, *in camera*; RX 284 at ENHL

of that visit, given the highly critical nature of the ACOG report. (Chassin, Tr. 5212, 5215; RX 349 at ENH RS 3439). {

} (Chassin, Tr. 5215-16; RX 324 at ENHL PK 29713, 74, *in camera*)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Romano, Te. 3155-56, *in camera*).

104

CCRFF 1416). ENH's post-merger changes have not completely eliminated practice by unqualified or problematic physicians. (See CCRFF 1424). Moreover, the referenced incident in fact proves the opposite of what ENH claims. While the incident itself resulted in a patient death, HPH's response was "a textbook example of how to do things

right in terms of identifying opportunities for improvement." (Romano, Tr. 3146).

Moreover, the incident was voluntarily reported to JCAHO. (Romano, Tr. 3150). HPH


was "damned if it did and damned if it didn't" under Defendant's proposed

evidence. If a review indicates no opportunities for improvement, ENH says

Response to Finding No. 1427:

This finding is incomplete and misleading. (See CCRFF 1425-1426).

1427° This pattern of ineffective adverse event case reviews was widespread throughout



Response to Finding No. 1428:

This finding is incomplete and misleading. (See CCRFF 1416, 1421-1425). In the cited portion of the transcript, Dr. Chassin merely repeated his anecdotal assessment

that HPH failed to identify opportunities for improvement, even though there are

recommendations from the medical executive committee and department chairman

(Newton, Tr. 381). Board members would also

medical staff leadership that would examine quality and peer review issues. (Newton, Tr.

381). { [REDACTED]

[REDACTED]

[REDACTED] } (CX

6265 at 25, *in camera*). { [REDACTED]

[REDACTED] } (CX 6265 at 25, *in camera*; see also CCFF 2218-2226). It is

missed. (See CCRFF 1425).

1421 Before the Masses. UNIL Ed. 1421. 01 1

discussions over from the Board of Trustees. (Class. Tr. 5016 15) A 1 1 D 1

hospitals have elected officers from the medical staff, and JCAHO has not taken a

position that elected medical staff

(2) **HPH's Pre-Merger Adverse Event Case Reviews
Were Suboptimal**

1435. Hospital quality assurance programs look carefully at adverse events, errors and close calls that do not result in adverse events to learn lessons.

1437.

[REDACTED]

[REDACTED]

[REDACTED]

EX-994-1211 BY 0074

1401, *in camera*; Silver, Tr. 3936, *in camera*; CX 1033, *in camera*). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Silver, Tr. 3936, *in camera*).

In addition, although Respondent claimed that it improved quality at HPH by eliminating the practice of performing D&C procedures in the emergency room, ENH allowed physicians to perform D&Cs in the emergency room at HPH from the time of the

certain second trimester abortions to be performed in labor and delivery at HPH.

let a physician perform inappropriate gynecological surgery at HPH for over two years after the merger. (See CCRFF 1423; see also CCRFF 1439 for a discussion on serious

QA problems at ENH's Ob/Gyn department)

iii. **ENH Improved HPH's Quality Assurance Program
Soon After The Merger**

1442 A. *After the Merger* ENH replaced the part-time and private practicing physician chairs

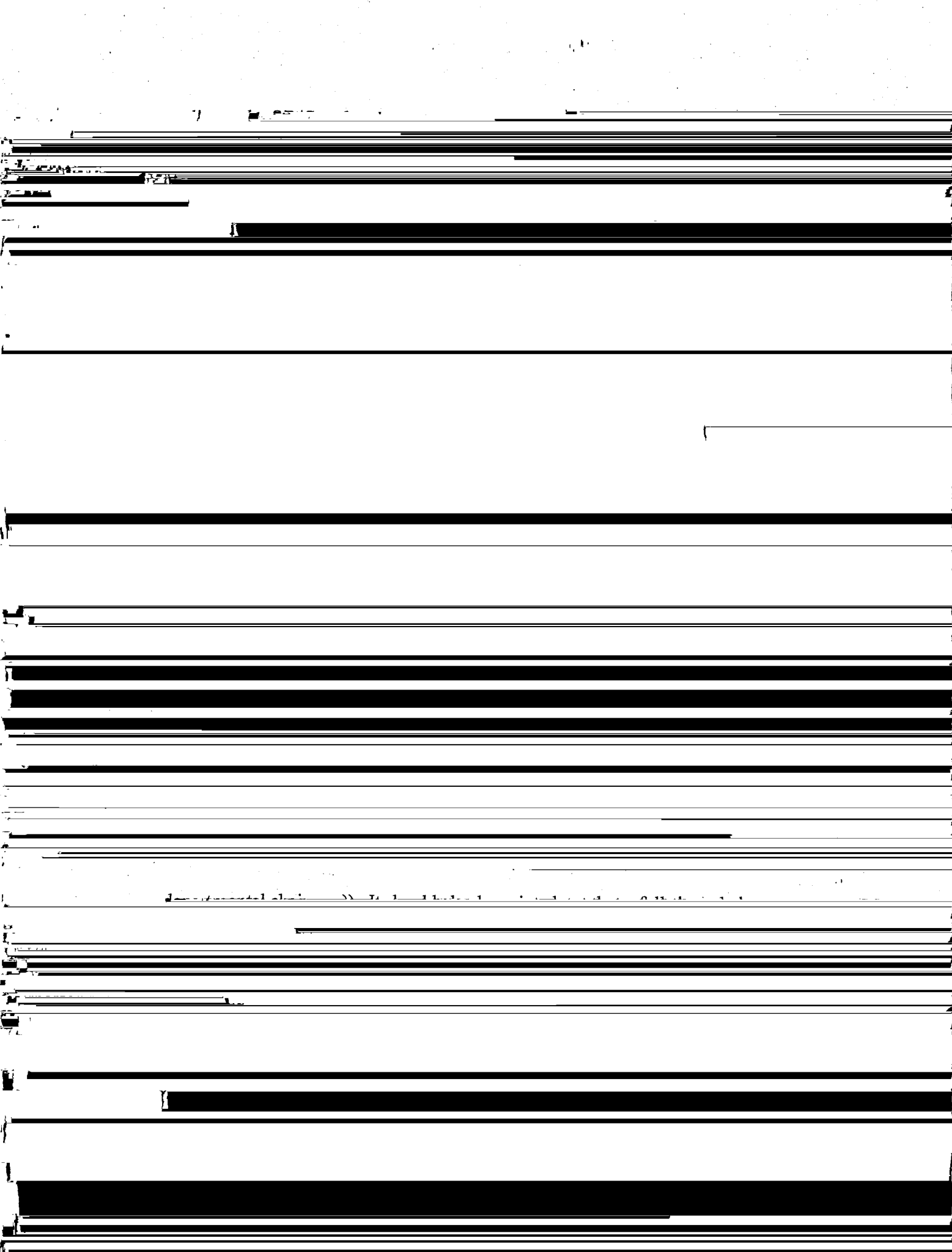
result. (Romano, Tr. 3133).

- (1) **The Merger Improved The Reporting Of Adverse Events At HPH**

3152).

Moreover, on the very same page of the document ENH cites in support of its claim of improved processes, RX 889 at ENHL PK 16485, there is a discussion of "Press Ganey patient satisfaction data," further demonstrating that ENH's criticisms of that data at trial are inconsistent with the business practices memorialized in documents it

reliable for other purposes. (See CCFEE 2248, 2269 (15/11/11) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000)



management took over following the merger (See CCFE 1474-1478)

1450. { [REDACTED] }
[REDACTED]
[REDACTED] } (Silver, Tr. 3880-82, in
camera). { [REDACTED] }
[REDACTED] } (Silver, Tr. 3881, in camera). { [REDACTED] }
[REDACTED]
[REDACTED] } (Silver, Tr. 3882-83, in camera). { [REDACTED] }
[REDACTED] } (Silver, Tr. 3884, in camera).

Response to Finding No. 1450:

This finding is irrelevant. (See CCFE 1474-8, 1, CCFE 1478)

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] } (Silver Tr. 3881, in camera). This is exactly what ENH says Dr. Silver
did with regard to inpatient privileges post merger

1452.

[REDACTED]

7-1-2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 (S) 1-10 T. 2000 2017 2022 2023 2024

1 _____

[REDACTED]

[REDACTED]

[REDACTED] (Jones, Tr. 4192, *in camera*). [REDACTED]

[REDACTED] (Jones, Tr. 4192, *in camera*).

Response to Finding No. 1456:

This finding is in violation of [REDACTED] (G. CODE 1424.6)

[REDACTED]

[REDACTED]

1457. [REDACTED]

(Silver, Tr. 3926, *in camera*).

Response to Finding No. 1457:

This finding is irrelevant and misleading. Before the merger, HPH would also
credential and re-credential physicians based upon [redacted]

across a wide variety of measures. (Chassin, Tr. 5252). Hospitals must have QI programs that are directed proactively using data-driven methods to improve their services over time. (Chassin, Tr. 5252).

Response to Finding No. 1460:

It should be noted that the consensus in this area is fairly recent. [REDACTED]

[REDACTED]

[REDACTED]

(Romano, Tr. 3159, *in camera*).

1461. To be effective, a QI program has to involve multidisciplinary approaches, which requires input from all different clinical perspectives – including physicians, nurses, pharmacists and all of the other perspectives of care. (Chassin, Tr. 5252). The QI program must also be

[REDACTED]

This finding is misleading. [REDACTED]

[REDACTED]

[REDACTED] (Romano Tr. 3451-52, *in camera*). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Romano, Tr. 3139, 3152, *in camera*). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Romano Tr. 3159, *in camera*).

The majority of ENH's critical pathways, a key component of its OI program,

pathways and comparison with pre-merger HPH care maps)). [REDACTED]

[REDACTED]

[REDACTED] (Romano, Tr. 3168-70, in

[REDACTED]

[REDACTED] (See, e.g., CX 464 at 2-3, in camera ([REDACTED]
[REDACTED])).

This finding is also misleading. Respondent implies that QI program
improvements at HPH would not have occurred unless HPH was acquired by ENH. [REDACTED]

[REDACTED]

[REDACTED] (Romano, Tr. 3159-60, in camera [REDACTED])

[REDACTED]

[REDACTED] (Romano, Tr. 3159, in
camera). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Romano, Tr. 3159, in camera).

[REDACTED]

[REDACTED]

[REDACTED]

iii. HPH's Pre-Merger QI Program Was Inadequate

1464. HPH's pre-Merger QI program suffered from several weaknesses: (1) it included several indicators that were not valid quality measures and did not use data from sources outside HPH to determine where its performance was on the scale of associated risk factors. (2) it

merger QI program)).

1467. {

[REDACTED]

[REDACTED]

(Chronic Tox 5055 D37016 -> FIDM -> ...)

[REDACTED] } (Romano, Tr. 3168-69, *in camera*; see
also O'Brien, Tr. 3560-62). (See also CCRFF 1305; CCRFF 1462-1463 (discussing
implementation of ENH critical software and systems. . . .)

menall - Even before the

A pre-merger strategic plan for HPH included paying closer attention to providing

documentation and recordkeeping

clinical pathways and modifications to procedures

(Romano, Tr. 3168-69, *in camera*; see also O'Brien, Tr. 3560-62). (See also CCRFF 1305; CCRFF 1462-1463 (discussing implementation of ENH critical pathways and

own assessment of its QI process "toward the end of the pre-merger period" and determined it needed improving. (Chassin, Tr. 5256). But then the merger happened immediately afterwards while advancements in QI were happening at hospitals across the

physicians began to set some of the priorities for quality improvement for all of ENH. (O'Brien, Tr. 3525).

Response to Finding No. 1472:

This finding is incomplete. HPH physicians complained after the merger about the lack of communication regarding policy and no representation at ENH. (CX 405 at 2). HPH physicians also complained about the Quality Control committee being moved out of HPH after the merger. (CX 405 at 6).

(Chassin, Tr. 5257). {

{

Response to Finding No. 1475:

{

{ (Romano, Tr.

3169, *in camera*. See CCRFF 1463, 1468 and 1469 ({

}), *in camera*).

1476. One of the priorities of the Subcommittee on Quality Improvement of the Board of Directors at ENH in the year 2000 was to align LPHI case management with ENH's

Healthcare Critical Pathway system." (RX 869 at FNHE F35 321)

1478 ENH implemented the first critical pathway at LIDL on or about March 2000

(PX 990 at ENLIL DV 16492) Dates: 1-1-2000 - 10-31-2001 ENLIL 115

[REDACTED]

(Romano, Tr. 3168-69, *in camera*).

iii. **Data From HPH's Pre-Merger Care Maps Cannot Be
Used To Assess Quality Improvements At HPH**

[REDACTED]

1481. It is not possible to learn anything about changes in quality of care at HPH after the Merger by comparing the pre-Merger data available through HPH's care maps with the available data from critical pathways at Evanston Hospital because length of stay and cost per case are not particularly related to quality of care. (Chassin, Tr. 5258-59). For example, data related to the pathway integration project, which reported...

[REDACTED]