

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

FEDERAL TRADE COMMISSION

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DOCUMENT PROCESSING

_____)
In the matter of)
)
)
Evanston Northwestern Healthcare)
Corporation,) Docket No. 9315
a corporation, and)
)
ENH Medical Group, Inc.,)
a corporation.)
_____)

RESPONDENTS' FIRST SET OF INTERROGATORIES

Pursuant to the Federal Trade Commission's Rules of Practice ("Rules"), 16 C.F.R. § 3.35, and the Scheduling Order entered in this action, Respondents Evanston Northwestern Healthcare Corporation ("ENH") and ENH Medical Group, Inc. ("ENH Medical Group") hereby request that Complaint Counsel answer the following interrogatories within 20 days of service of this request, in accordance with the Definitions and Instructions set forth below.

DEFINITIONS

- A. The term "agent" shall mean: any agent, employee, officer, director, attorney, independent contractor or any other person acting at the direction of or on behalf of another.
- B. The term "communication" means any transfer of information, written, oral or by any other means.
- C. The term "Complaint" means the Complaint filed in the above-captioned case.
- D. The terms "constitute," "contain," "discuss," "analyze," or "relate to" mean constituting, reflecting, respecting, regarding, concerning, pertaining to, referring to, relating to, stating, describing, recording, noting, embodying, memorializing, containing, mentioning, studying, assessing, analyzing or discussing.
- E. The term "date" shall mean the exact day, month and year if ascertainable, or if not the best approximation.
- F. The term "document" includes, without limitation, writings, drawings, graphs, charts, handwritten notes, film, photographs, audio and video recordings and any such representations stored on a computer, a computer disk, CD-ROM, magnetic or electronic tape, or any other means of electronic storage, and other compilations from which information can be obtained in machine-readable form (translated, if necessary, into reasonably usable form by the

person subject to the subpoena). The term “documents” includes electronic mail and drafts of documents, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in your possession, custody or control.

G. The term “ENH” means Evanston Northwestern Healthcare Corporation (including Evanston Hospital, Glenbrook Hospital, and Highland Park Hospital), its parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between ENH and any other person.

H. The term “Highland Park” means Highland Park Hospital, its parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

I. The term “identify,” when used in reference to:

(a) a document, means and includes the Bates-number affixed to it by the producing party, if such document has been produced during the course of this litigation or the underlying investigation, and, to the extent it is not apparent from the face of the document, also indicate: the name and address of the custodian of the document from whose file the document has been produced or in whose file the document is maintained, the location of the document, and a general description of the document, including (a) the type of document (i.e., correspondence, memorandum, facsimile, etc.); (b) the general subject matter of the document; (c) the date of the document; (d) the author of the document; (e) the addressee of the document; and (f) the relationship of the author and addressee to each other. If any such document is no longer in Complaint Counsel’s possession or subject to Complaint Counsel’s control, “identify” also means to state what disposition was made of it and the date of such disposition.

(b) a fact, means to describe fully actual testimony; testimony you intend to illicit; information gathered during the course of interviews; data; documents; and, information otherwise gathered during the course of this litigation and the Investigation.

(c) a natural person, means to state his or her full name, home and office telephone number, address, e-mail address, screen name, business title, business affiliation or, if the above are not known, such information as was last known.

(d) a corporation, partnership or any legal entity other than a natural person, means to state its full name, form of organization, current or last known address and principal place of business and phone number.

(e) any act, occurrence, transaction, decision, statement, communication or conduct (hereinafter collectively referred to as “act”), means to describe in substance the event or events constituting such act, or what transpired, the place and date thereof and to identify the persons present, the persons involved, and all documents that relate to the act.

J. The term “including” shall mean “including without limitation.”

K. The term "Investigation" means the pre-Complaint investigation of this matter, FTC File No. 0110234.

L. The term "merger" means the merger of ENH and Highland Park in January 2000.

N. The terms "person" or "persons" mean natural persons, groups of natural persons acting as individuals, groups of natural persons acting in a collegial capacity (e.g., as a committee, board, panel, etc.), associations, representative bodies, government bodies, agencies, or any other incorporated or unincorporated business, social or government entity.

O. The terms "you" and "your" mean Complaint Counsel.

P. Unless otherwise defined, all words and phrases used in this First Set of Interrogatories shall be accorded their usual meaning as defined by Webster's New Universal Unabridged Dictionary (2d ed. 1983).

INSTRUCTIONS

A. Each interrogatory shall be answered separately and fully in writing under oath pursuant to Rule 3.35(a). If any interrogatory cannot be answered in full after exercising due diligence to secure the information to do so, state and answer the interrogatory to the extent possible.

B. To the extent that you consider any of the following interrogatories objectionable, answer so much of each interrogatory and each part thereof as is not objectionable in your view and separately state that part of each interrogatory as to which you raise objection and each ground for each such objection.

C. If you object to fully identifying a document or oral communication because of a privilege, identify each interrogatory for which the privilege is claimed, together with the following information: (a) the date of all responsive documents, (b) the sender of the document, (c) the addressee, (d) the number of pages, (e) the subject matter, (f) the basis on which the privilege is claimed, (g) the names of all persons to whom copies of any part of the document were furnished, together with an identification of their employer and their job titles, (h) the present location of the document and all copies thereof, and (i) each person who has ever had possession, custody, or control of the documents.

D. You are under a continuing obligation to supplement your answers to these interrogatories under Rule 3.31(e).

E. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

F. The terms "each" and "all" are to be constructed as a request that every document or piece of information be identified separately.

G. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive.

H. The singular includes the plural, and vice versa.

I. Each interrogatory is to be accorded a separate response, and answers are not to be combined for the purpose of supplying a common answer to multiple interrogatories.

J. Unless otherwise indicated, the relevant time period for purposes of these interrogatories is the time period between January 1, 1995, and the date of hearing in this case.

INTERROGATORIES

1. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 1 of the Complaint that: “The price increases that resulted from the merger are large and far beyond those achieved by comparable hospitals during this time period.” Your answer should include a detailed description of the prices that allegedly increased, separately by payer, the amount of such increase, the “comparable hospitals” at issue, and the precise “time period” referenced in the allegation.

2. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 3 of the Complaint that: “After merging the hospitals and the physician groups, ENH conducted negotiations with private payers by offering hospital services and physician services as a package. In many instances, ENH required private payers to accept its terms for both hospital and physician services or face termination of both hospital and physician contracts.” Your answer should identify the “private payers,” “hospital services,” “physician services” and “terms” at issue, and describe the method by which ENH purportedly required private payers to accept terms.

3. Describe in detail the product market alleged in paragraph 16 of the Complaint and identify each and every fact (including, but not limited to, all documents) upon which you rely in support of such product market. Your answer should define all terms used in paragraph 16, including “general acute care inpatient hospital services,” “basic medical and surgical diagnostic and treatment services that include an overnight stay in the hospital by the patient,” and “tertiary services.” To the extent the alleged product market purports to distinguish between primary and secondary hospital services, define those terms as well.

4. Describe in detail the geographic market alleged in paragraph 17 of the Complaint and identify each and every fact (including, but not limited to, all documents) upon which you base your allegation that: “The existence of this relevant geographic market is evidenced, among other things, by the ability of ENH, once it controlled Highland Park as well as the Evanston and Glenbrook hospitals, profitably to impose significant and non-transitory price increases upon private payers in their purchase of acute care hospital services at those hospitals.” Your answer should identify the “significant and non-transitory price increases,” “private payers” and “acute care hospital services” at issue. Your answer should further identify the exact geographic boundaries of the alleged geographic market, including all zip code areas or portions thereof in such market, as well as each hospital that falls within that geographic market.

5. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 18 of the Complaint that: “The merger of ENH and Highland Park created the largest hospital system in the relevant market. This market is highly

concentrated and the combination significantly increased market concentration. The merger resulted in a post-merger HHI increase in excess of 500 points to a level exceeding 3000 points.” Your answer should explain in detail how this alleged HHI increase was calculated, including, the specific hospitals in the “relevant market” and the methodology used to calculate their market shares, and the time period from which the data was used to calculate the post merger HHI.

6. State what you maintain to be the current market shares of each participant in what you maintain to be the relevant markets under Count I of the Complaint, the manner in which those market shares should be calculated and the present HHI in such relevant markets.

7. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 25 of the Complaint that: “Prior to the merger, ENH’s Evanston and Glenbrook hospitals had operating costs comparable to area hospitals and other comparable hospitals. Following the merger, the operating costs at the Evanston and Glenbrook hospitals increased substantially, and much more than experienced by area hospitals and other comparable hospitals.” Your answer should identify the referenced “operating costs,” “area hospitals” and “other comparable hospitals.” Your answer should also quantify what is meant by “increased substantially” as well as the increases in operating costs “experienced by area hospitals and other comparable hospitals.”

8. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 26 of the Complaint that: “Following the merger, salary expenses at ENH’s Evanston and Glenbrook hospitals increased substantially, and much more than experienced by area hospitals and other comparable hospitals.” Your answer should identify the referenced “salary expenses,” “area hospitals” and “other comparable hospitals.” Your answer should also quantify what is meant by “increased substantially” as well as the increases in salary expenses “experienced by area hospitals and other comparable hospitals.”

9. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 29 of the Complaint that: “Following the merger, ENH established a strategy of negotiating with private payers on behalf of the three hospitals as a single system. In many instances, this policy, with the addition of Highland Park to ENH, effectively forced private payers to accept price increases that were significantly higher than the price increases of other comparable hospitals, or face the loss of all three hospitals from their networks. Such a loss would have a significant adverse impact on their ability to market their managed care products.” Your answer should identify the referenced “strategy,” “private payers,” “price increases,” “other comparable hospitals,” “networks,” “significant adverse impact on their ability to market their managed care products” and “managed care products.” Your answer should also specifically quantify, in detail, the alleged post-merger ENH “price increases” as well as the referenced price increases “of other comparable hospitals.”

10. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 30 of the Complaint that: “Following the merger, ENH raised prices more than the price increases implemented by other comparable hospitals. Private payers regarded the ENH price increases as unwarranted.” Your answer should identify the referenced “prices” raised by ENH, the “price increases implemented by “other comparable

hospitals,” the identities of these “other comparable hospitals” and the referenced “[p]rivate payers.”

11. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 30 of the Complaint that: “ENH also required many private payers to agree to pay prices set at a discount off of ENH’s list prices in lieu of predetermined per diem prices for each day of inpatient care, a feature of many of the hospitals’ pre-merger contracts with their major payers.” Your answer should identify the referenced “private payers,” and “major payers.”

12. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 30 of the Complaint that: “ENH raised its list prices several times following the merger.” Your answer should identify each and every such increase in list price, if any, that Complaint Counsel alleges supports its allegations that the merger substantially lessened competition in a line of commerce in a section of the country in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

13. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 31 of the Complaint that: “Following the merger, ENH proposed large price increases to its major private payers. All but one of these large customers accepted ENH’s significant postmerger increases rather than try to sell a health plan without any of the three ENH hospitals.” Your answer should identify, separately for each payor, the referenced “proposed large price increases,” “major private payers,” “large customers” and “significant postmerger increases,” and all facts (including, but not limited to, all documents) that purportedly support the allegations regarding the amount of the prices increases. Your answer should also include a detailed explanation of the methodology used to calculate the alleged rate increases to each payer identified in paragraph 31 of the Complaint.

14. To the extent that you maintain that the “private payers” referenced in paragraph 31 of the Complaint increased premiums charged to their customers as a result of ENH’s post-merger price increases, identify each such private payer and the purported premium increases. If you do not make this allegation then so state.

15. Describe in detail the relevant market (product and geographic), if any, that you maintain is alleged in Count II of the Complaint.

16. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 31 of the Complaint that: “ENH also negotiated with the payer hospital and physician services as a package, requiring each payer to accept ENH’s terms for the package or otherwise lose both contracts[.]”

17. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 39 of the Complaint that: “The salaried physicians and the independent physicians have not engaged in any meaningful efficiency-enhancing integration. They do not share information technology systems to enhance services. Nor do they comply or seek to comply with common performance standards or clinical protocols to enhance services.”

Your answer should define "meaningful efficiency-enhancing integration," "common performance standards," and "clinical protocols."

18. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 44 of the Complaint that: "By establishing these and other price increases on behalf of the salaried physicians and the independent physicians, ENH Medical Group engaged in illegal price fixing in restraint of trade. This conduct deprived commercial payers, employers, and individuals of the benefits of competition among physicians."

19. State whether Complaint Counsel intends to introduce evidence of what you believe to be the relevant product and geographic market or markets for the purpose of Count III of the Complaint at any time during the trial (including any rebuttal case that may be permitted) and, if so, identify these markets and all facts (including, but not limited to all documents) upon which the definition of such markets definition is based.

20. Describe in detail what you maintain to be the proper methodology for comparing the contracted prices paid by each payer identified in the complaint or whom you expect to call as a witness to Highland Park Hospital or ENH with contracted prices paid by each such payor to other hospitals in Lake, Cook, Kendall, McCane and Henry Counties. Your answer should include a detailed explanation of all data used in such calculations including, for example, contractual prices, claims data, impact of stop loss provisions, case mix adjustments, and any other factor that you deem relevant.

21. To the extent that you maintain that the price increases referenced in paragraph 44 of the Complaint caused the "private payors" referred to in the Complaint to increase premiums charged to their customers, identify each such private payer and the purported premium increases. If you do not make this allegation then so state.

22. State in detail each and every item of relief that you seek in connection with Counts I and II of the Complaint.

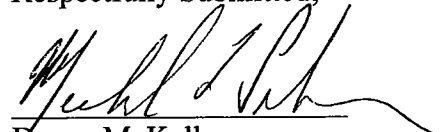
23. State in detail each and every item of relief that you seek in connection with Count III of the Complaint and from whom that relief is sought. Your answer should specifically state whether complaint counsel will seek disgorgement, restitution, or any other financial payment from Respondents in connection with Count III; the contents of the requested cease and desist order; the nature of the "periodic compliance reports" to be filed with the Commission; and all other "measures of steps" purportedly "appropriate . . . to correct or remedy, or prevent the recurrence of, the [alleged] anti-competitive practices engaged in by ENH Medical Group."

24. Identify the sources for all quotations contained in Complaint Counsel's presentation for the March 24, 2004, Status Conference. Your answer should include the identities of Payers A through I and Physicians #1 through # 3 discussed in that presentation.

25. Identify each and every fact (including, but not limited to, all documents) upon which you rely to support any assertion by you that ENH and Highland Park were competitors before the merger. If you do not make any such assertion then so state.

26. Identify each and every fact (including, but not limited to, all documents) upon which you rely to support any assertion by you that private payers (as that term is used in the complaint) referred to or relied in any way on competition between ENH and Highland Park during contract negotiations before the merger. If you do not make any such assertion then so state.
27. Identify each payer/employer that the FTC staff has communicated with in this matter and describe fully (including identifying all facts and documents) each such communication between staff and such payers/employers.
28. Identify each person with whom FTC staff has communicated regarding the potential purchase of Highland Park Hospital if divestiture were ordered as a form of relief pertaining to Count I and/or Count II of the Complaint and describe fully (including identifying all facts and documents) each such communication.
29. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 6 of the Complaint that: "Highland Park was pursuing the offering of open heart surgery through regulatory filings with the state of Illinois and through formation of a joint venture with Evanston."
30. Identify each and every fact (including, but not limited to, all documents) upon which you base your allegation in paragraph 12 of the Complaint that: "In August 1999, ENH estimated the fair market value of Highland Park at \$233,528,000."
31. Identify any expert witnesses who you have retained in anticipation of testifying as a rebuttal expert in this case, if permitted to do so by the Court, and summarize such expert's expected areas of testimony.
32. Identify all written communications between the Federal Trade Commission (including Complaint Counsel) and any expert listed on Complaint Counsel's Expert Witness List and identify any documents provided to the Federal Trade Commission (including Complaint Counsel) by such experts, in connection with any matter involving health care; including, but not limited to, hospitals, physicians, managed care contracting, quality, and clinical integration.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

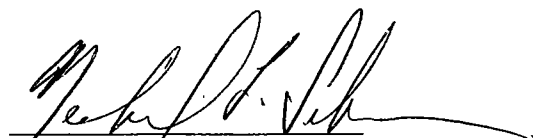
I hereby certify that on July 22, 2004, a copy of the foregoing Respondents' First Set of Interrogatories was served by email and first class mail, postage prepaid, on:

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Chief Administrative Law Judge
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