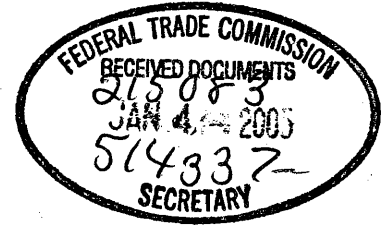


**ORIGINAL**



**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION  
Office of Administrative Law Judges**

\_\_\_\_\_  
In the matter of )  
 )  
 )  
**Evanston Northwestern Healthcare** )  
**Corporation,** )  
a corporation, and )  
 )  
**ENH Medical Group, Inc.,** )  
a corporation. )  
 )  
 )  
\_\_\_\_\_ )

Docket No. 9315

**COMPLAINT COUNSEL'S MOTION FOR  
IN CAMERA TREATMENT OF HEARING EXHIBITS**

Pursuant to Section 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), Complaint Counsel hereby moves for *in camera* treatment of fifteen exhibits that Complaint Counsel have included on their exhibits.

Fourteen of the exhibits are computer disks and CDs, prepared for Complaint Counsel's expert witness, Deborah Haas-Wilson, that contain a compilation of business information that Respondents and third parties produced to Complaint Counsel.<sup>1</sup> Respondents and the third parties specifically (and appropriately) designated this information as confidential when it was produced. Complaint Counsel is filing this motion because Complaint Counsel cannot disclose this compilation of materials to any one or all of the producing parties.<sup>2</sup> Nevertheless, *in camera*

<sup>1</sup> A description of the disks and CDs labeled CX 3000 through CX 3013 are included in the declaration of Christopher J. Garmon that accompanies this motion.

<sup>2</sup> If Complaint Counsel were to provide copies of the disks and CDs to the submitters of  
(continued...)

treatment of these data is appropriate. Therefore, because no individual private party – either Respondents or one of the third parties – can seek the *in camera* treatment of these data.

Complaint Counsel files this Motion for *In Camera* Treatment.

Regarding the fifteenth exhibit, Complaint Counsel is requesting *in camera* treatment for the data contained on six CDs, as reflected in exhibit CX 3019, that Complaint Counsel obtained from the Illinois Department of Public Health (“IDPH”). The IDPH provided this data upon the express understanding among it and the parties that the confidentiality of such data would be maintained (see attached Stipulation For Designation of Material dated June 18, 2004).

## **I. Introduction**

Complaint Counsel is seeking *in camera* treatment of the computer disks and CDs that are numbered CX 3000 through CX 3013 on Complaint Counsel’s proposed exhibit list.

Complaint Counsel received the information included on these exhibits from Respondents and various third-parties, including Aetna, Inc.; Blue Cross/Blue Shield of Illinois; CIGNA; Humana Inc.; United Healthcare; and the State of Illinois. Complaint Counsel’s expert witness, Deborah Haas-Wilson, utilized the data to perform analyses in the course of forming her opinion in this matter. Complaint Counsel is also seeking *in camera* treatment for the CDs that are reflected in the exhibit numbered CX 3019 on Complaint Counsel’s proposed exhibit list.

The exhibits and the type of information contained in them for which Complaint Counsel is seeking *in camera* treatment are described below:

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<sup>2</sup> (...continued)

the information contained on them, each of the submitters would have access to confidential information of the other submitters.

<b>Exhibit Number</b>	<b>Type of Information</b>
CX 3000	Product and provider data relating to ENH, Aetna, Blue Cross/Blue Shield, Cigna, Humana, United Healthcare, and the State of Illinois.
CX 3001	Product and provider data relating to ENH, Aetna, Blue Cross/Blue Shield, Cigna, Humana, United Healthcare, and the State of Illinois.
CX 3002	Contract pricing information and cost information relating to ENH and Humana.
CX 3003	Pricing data and contractual analysis relating to ENH, Aetna, Cigna, Blue Cross/Blue Shield, United Healthcare, and Humana.
CX 3004	Individual payer analyses relating to Aetna, Cigna, Humana, and United Healthcare.
CX 3005	Information relating to Cigna, CMS, Humana, United Healthcare, and Wellpoint.
CX 3006	Patient and payment data relating to Aetna, Cigna, Humana, and United Healthcare.
CX 3007	Pricing data and analyses relating to ENH.
CX 3008	Patient and payment data relating to Aetna, Cigna, Humana, and United Healthcare
CX 3009	Pricing analyses by payer and overall.
CX 3010	Provider data and statistical analyses by payer.
CX 3011	Revenues and analyses relating to ENH.
CX 3012	Provider data relating to Humana, Great West, Aetna, Blue Cross/Blue Shield, Cigna, United Healthcare, and Wellpoint.
CX 3013	Analyses based upon data received from the State of Illinois.

Exhibit Number	Type of Information
CX 3019	Patient discharge data collected and maintained by the IDPH relating to patients hospitalized within the State of Illinois from 1998 through 2003.

## II. Discussion

The exhibits described in this motion warrant *in camera* treatment as provided by 16 C.F.R. § 3.45(b). Under this section, requests for *in camera* treatment must show that public disclosure of the document in question “will result in a clearly defined, serious injury to the person or corporation whose records are involved. *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the document is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). In this context, the “courts have generally attempted to protect confidential business information from unnecessary airing.” *Hood*, 58 F.T.C. at 1188. Under this standard, it appears that *in camera* treatment of the exhibits CX 3000 through CX 3013 and CX 3019 is warranted.

Exhibits CX 3000 through CX 3013 and CX 3019 contain data that has been accorded *in camera* treatment in previous matters in the context of the health care industry. More specifically, *in camera* treatment has been granted for documents and information relating to managed care pricing (reimbursement rates), internal efficiency analyses, customer analyses, personal financial and patient information, admission days and total revenues, and managed care contracting. See *In re North Texas Specialty Physicians*, Docket No. 9312 (Order on Non-Parties’ Motions for *In Camera* Treatment of Documents Listed on Parties’ Exhibit Lists, April

23, 2004) (available at [www.ftc.gov/os/adjpro/d9312](http://www.ftc.gov/os/adjpro/d9312)).

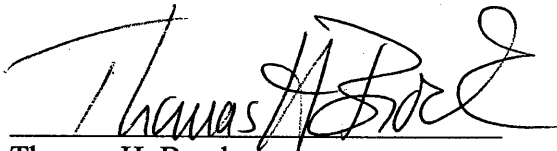
Because the information that forms the basis of the files contained in exhibits CX 3000 through CX 3013 and CX 3019 is similar, if not identical, to the information receiving *in camera* treatment in the past, the information contained in the exhibits appears to be “sufficiently secret and sufficiently material” to the submitters’ businesses that disclosure would result in serious competitive injury. Moreover, disclosure of the information contained in the exhibits will not materially promote the resolution of this matter, nor will the information materially assist the public understanding of the litigation. Thus, the exhibits in question warrant *in camera* treatment.

### III. Conclusion

*In camera* treatment of the exhibits in question is appropriate for the reasons outlined above. Complaint Counsel requests that the exhibits receive *in camera* treatment.

Dated: January 4, 2005

Respectfully submitted,



Thomas H. Brock  
Complaint Counsel  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580  
(202) 326-2813  
TBrock@FTC.gov

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

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

TO: The Honorable Stephen J. McGuire  
Chief Administrative Law Judge

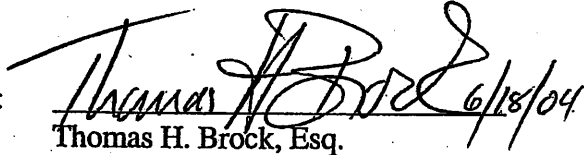
**STIPULATION FOR DESIGNATION OF MATERIAL**

Complaint Counsel and Respondents hereby agree that patient discharge data (such data being referred to as the "Universal Data Set") supplied to Complaint Counsel by the Illinois Department of Public Health ("IDPH") or the Illinois Health Care Cost Containment Council ("IH4C") shall be designated as "Restricted Confidential, Attorney Eyes Only - FTC Docket No. 9315" under the Protective Order Governing Discovery Material entered in this matter ("Protective Order"); provided, however, that any data included in the Universal Data Set originally supplied by Highland Park Hospital and/or Evanston Northwestern Healthcare Corporation to the IDPH or IH4C may be disclosed to Evanston Northwestern Healthcare Corporation.

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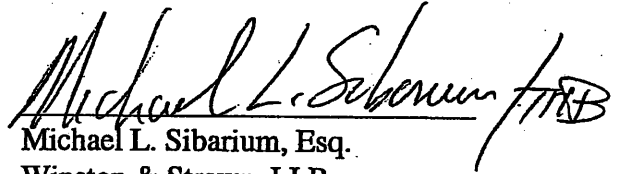
By:

 6/18/04

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(202) 326-2813  
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By:



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Fax: (312) 558-5700  
Email: [dkelley@winston.com](mailto:dkelley@winston.com)

Counsel for Respondents

**SO ORDERED:**

---

Stephen J. McGuire  
Chief Administrative Law Judge

Dated:

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing documents were hand delivered to

The Honorable Stephen J. McGuire  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW (H-106)  
Washington, D.C. 20580

and served on counsel for the Respondents by electronic and first class mail delivery to:

Michael L. Sibarium  
WINSTON & STRAWN, LLP  
1400 L St., NW  
Washington, DC 20005

Duane M. Kelley  
WINSTON & STRAWN, LLP  
35 West Wacker Dr.  
Chicago, IL 60601-9703

Charles B. Klein  
WINSTON & STRAWN, LLP  
1400 L St., NW  
Washington, DC 20005

6/17/07  
Date

  
Albert Y. Kim



**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

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

**DECLARATION OF CHRISTOPHER J. GARMON  
PURSUANT TO 28 U.S.C. § 1746**

I, Christopher J. Garmon, declare as follows:

1. My name is Christopher J. Garmon. I am employed as an economist by the Federal Trade Commission ("Commission") where my office is located at 601 New Jersey Avenue, NW, Washington, D.C., 20001. I have 6 years of experience as an economist with the Commission. I am currently assigned to the Commission's case entitled *In the Matter of Evanston Northwestern Healthcare and ENH Medical Group, Inc.*, Docket No. 9315. The following facts are known to me personally and if called as a witness, I could and would competently testify thereto.

2. The exhibits consist of computer disks and CDs that Complaint Counsel compiled for their expert witness, Deborah Haas-Wilson. These disks and CDs are included in Complaint Counsel's exhibits labeled CX 3000 through CX 3013. Upon review of the disks and CDs, I have found that they contain the following information:

<u>Exhibit</u>	<u>Description</u>
CX 3000	Product and provider data, including price estimates, relating to ENH, Aetna, Blue Cross/Blue Shield, Cigna, Humana, United Healthcare, and the State of Illinois.
CX 3001	Product and provider data, including pricing, relating to ENH, Aetna, Blue Cross/Blue Shield, Cigna, Humana, United Healthcare, and the State of Illinois.
CX 3002	Contract pricing information and cost information relating to ENH and Humana.
CX 3003	Pricing data and contractual analysis relating to ENH, United Healthcare, Aetna, Cigna, Blue Cross/Blue Shield and Humana.
CX 3004	Individual payer analyses relating to Aetna, Cigna, Humana, and United Healthcare.
CX 3005	Information relating to Cigna, CMS, Humana, United Healthcare, Wellpoint, and the State of Illinois.
CX 3006	Patient and payment data relating to Aetna, Cigna, Humana, and United Healthcare.
CX 3007	Pricing data and analyses relating to ENH.
CX 3008	Patient and payment data relating to Aetna, Cigna, Humana, and United Healthcare.
CX 3009	Pricing analyses by payer and overall.
CX 3010	Provider data and statistical analyses by payer.
CX 3011	Revenues and analyses relating to ENH.
CX 3012	Provider data relating to Humana, Great West, Aetna, Blue Cross/Blue Shield, Cigna, United Healthcare, and Wellpoint.
CX 3013	Analyses based upon data received from the State of Illinois.

3. Complaint Counsel obtained most of the information and data contained in the

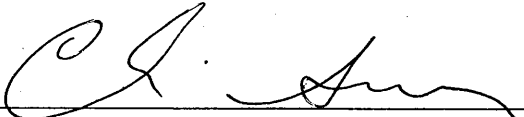
exhibits CX 3000 through CX 3013 from Respondent or third-parties during the course of the investigation or during the discovery phase of the litigation pursuant to compulsory process. To the best of my knowledge, all of the private parties asked that the data they produced not be publicly disclosed.

4. The data reflected in CX 3019 is data that the Federal Trade Commission obtained from the Illinois Department of Public Health. Such data consists of patient discharge data included on six CDs relating to patients hospitalized within the State of Illinois from 1998 through 2003. Complaint Counsel received this data only after the parties to this litigation stipulated that the data would be classified as "Restricted Confidential, Attorney Eyes Only."

5. It has been my experience while at the Federal Trade Commission that third-parties who provide information and data of the type included in the materials contained CX 3000 through CX 3013 and CX 3019 consider such information to be competitively sensitive and highly confidential. Further, when Respondent and the third parties produced this data to the Commission, they requested that it be treated as confidential and not be publicly disclosed. I would expect that any third-party would want such information as that reflected in CX 3000 through CX 3013 and CX 3019 to be given *in camera* treatment if used during the hearing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 4, 2005.

  
Christopher J. Garmon

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

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

**ORDER**

Upon consideration of Complaint Counsel's Motion for In Camera Treatment of Hearing Exhibits, it is hereby ORDERED that Complaint Counsel's motion is GRANTED for Exhibits CX 3000 through CX 3013 and CX 3019 for a period of five years.

\_\_\_\_\_  
Stephen J. McGuire  
Chief Administrative Law Judge

Dated:

**CERTIFICATE OF SERVICE**

I hereby certify that on January 4, 2005, I caused copies of the Complaint Counsel's Motion for *In Camera* Treatment of Hearing Exhibits, Declaration of Christopher J. Garmon, and Proposed Order to be served on the following persons by electronic mail and first class mail delivery:

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

Duane M. Kelley  
WINSTON & STRAWN, LLP  
35 West Wacker Drive  
Chicago, IL 60601-9703

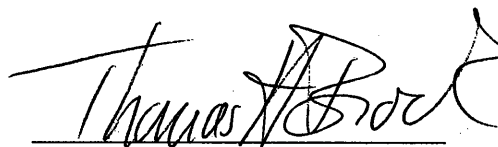
Charles B. Klein  
WINSTON & STRAWN, LLP  
1400 L Street, NW  
Washington, DC 20005

and the delivery of two copies to:

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

Date

1/4/05



Thomas H. Brock  
Complaint Counsel