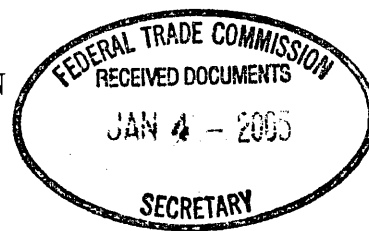


UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



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In the matter of )  
)  
)

**Evanston Northwestern Healthcare  
Corporation,** )  
)

a corporation, and )  
)

**ENH Medical Group, Inc.,** )  
)

a corporation. )  
\_\_\_\_\_ )

Docket No. 9315

**MOTION FOR *IN CAMERA* STATUS AND FOR A PROTECTIVE ORDER  
PURSUANT TO 16 C.F.R. §4.10**

Pursuant to 16 C.F.R. §4.10, Third Party Witness Swedish Covenant Hospital (“SCH”) moves for the granting of *in camera* status and the entry of an appropriate Protective Order preventing the public disclosure of those documents initially produced by SCH and more recently identified by Respondents Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc. as trial exhibits. Those documents to be used as exhibits are listed in Exhibit A, attached hereto (the “Documents”). In support of its motion, SCH states as follows:

1. The Law Judge possesses broad discretion to grant *in camera* status to confidential business data, so as to avoid competitive injury from the public disclosure of sensitive information. See e.g., *Eaton, Yale & Towne*, 79 F.T.C. 998, 1001 (1971).
2. The Documents referenced above can best be divided into two (2) broad categories, one relating to managed care matters and the second relating to strategic planning activity.

3. The managed care materials<sup>1</sup> consist of a variety of managed care contracts and addenda, as well as a detailed managed care contract analysis recently prepared for SCH by an external consultant, at significant cost.
4. All of these materials reflect the end-product of intense negotiations between SCH and various third-party payors in the Chicago marketplace. Success or failure in the healthcare marketplace served by SCH and its competitors is determined, in large measure, by the managed care rates negotiated by providers such as SCH.
5. The public disclosure of the rates negotiated by SCH and the tools it utilized in order to succeed in managed care contract negotiation would result in clearly defined, serious injury to SCH, once competing area hospitals were able to identify the rate structures and processes in place at SCH. For these reasons, SCH, like all institutional providers in the competitive healthcare marketplace of Chicago, keeps its managed care rates, as well as its negotiation tactics and strategy, confidential to avoid competitive injury from public disclosure.

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<sup>1</sup> The Exhibits relating to managed care at SCH are numbered RX-0010, RX-0014, RX-0027, RX-0033, RX-0042, RX-0057, RX-0163, RX-0314, RX-0326, RX-0332, RX-0354, RX-0395, RX-0438, RX-1164, RX-1277, RX-1406, RX-1578 and RX-1680.

6. Likewise, the second category of material, relating to strategic planning at SCH<sup>2</sup>, is obviously also directly material to the ongoing business of SCH. These trial exhibits include a thorough Competitor/Market Share analysis, several reports of SCH's Marketing and Strategic Planning Committee to the SCH Board of Directors and also a memorandum prepared by counsel outlining strategies for a presentation to the Illinois Health Facilities Planning Board, which was considering the request of SCH to perform open heart surgery.<sup>3</sup>
7. As was the case with the managed care materials referenced above, these strategic planning materials have understandably been kept confidential by SCH, as any public disclosure of these studies and market reviews would also yield massive competitive injury to SCH.
8. Counsel for Respondent has indicated that Respondent will not object to the granting of this Motion.

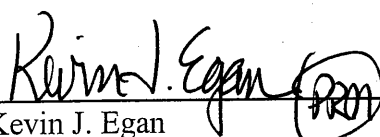
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<sup>2</sup> The Exhibits relating to strategic planning at SCH are numbered RX-0350, RX-1292, RX-1342, RX-1354, RX-1548 and RX-1692.

<sup>3</sup> That document, RX-0350, is also privileged as an attorney-client communication.

WHEREFORE, SCH respectfully requests that the Law Judge exercise his judicial discretion and grant SCH's Motion for *In Camera* Status for those trial exhibits identified in Exhibit A, attached hereto, so as to prevent public disclosure of these materials and serious competitive injury to SCH.

Respectfully submitted,

  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

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

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and delivery of two copies to:

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

1/4/05  
Date

Kevin J. Egan  
Kevin J. Egan  
Counsel to Swedish Covenant  
Hospital

**EXHIBIT A**  
**Swedish Covenant Hospital Productions**

<b>Exhibit No.</b>	<b>Date</b>	<b>Description</b>	<b>Bates Range<sup>4</sup></b>
RX-0326	04/01/98	Hospital Service Agreement between Swedish Covenant Hospital and HMO Illinois	0000347-0000351
RX-0438	01/01/99	Amendment to Blue Cross PPO Hospital Contract for Swedish Covenant Hospital	0000425-0000427
RX-0350	06/24/98	Points for meeting of Health Facilities Planning Board Committee on Open Heart.	0000841-4
RX-0163	05/01/96	Provider Agreement between MetraHealth and Swedish Covenant Hospital	0001349-85
RX-0042	01/01/93	Amendment Three to Hospital Agreement between Metropolitan Life Insurance Co. and Swedish Covenant Hospital	0001536-37
RX-0314	02/01/98	Hospital Participation Agreement between Rush Prudential and Swedish Covenant Hospital	0001802-00001821
RX-0354	07/01/98	Addendum to Preferred Plan Contract with Swedish covenant Hospital	0001850
RX-0395	12/01/98	PPO/POSAmdendment to PPO/POS Hospital Services Agreement between Swedish Covenant Hospital and One Health	SCH 002735 – 002740
RX-1277	04/26/02	Letter from Mohrdieck to Vieth re amended BCBSI rates for Swedish Covenant Hospital	SCH 000898-000899
RX-0057	11/01/93	Letter from Skeggs to Krugel re BCBSI PPO Per Diem rate update	SCH 000959-60
RX-0033	11/01/91	Letter from Gimmerman to Krugel	SCH 000964

<sup>4</sup> Documents without a bates prefix were produced by the FTC and indicate Swedish Covenant as the custodian.

<b>Exhibit No.</b>	<b>Date</b>	<b>Description</b>	<b>Bates Range<sup>4</sup></b>
		re BCBSI inpatient per diem rate changes	
RX-0027	04/01/91	Letter from Biedermann to Krugel re PPO Per Diem Rate Update	SCH 000965
RX-0014	11/10/89	Letter from Biedermann to Brobst re PPO Per Diem Rate Update	SCH 000968
RX-0010	11/16/88	Letter from Biedermann to Brobst re PPO Per Diem Rate Update	SCH 000973
RX-1406	12/15/02	Addendum to 1999 Hospital Service Agreement, signed by HFN and Swedish Covenant Hospital	SCH 001875-80
RX-0332	05/01/98	Hospital Service Agreement between HFN and Swedish Covenant Hospital	SCH 001923-001948
RX-1680	04/01/04	Addendum to 1999 Hospital Service Agreement, signed by HFN and Swedish Covenant Hospital.	SCH 001950-7
RX-1164	10/18/01	Letter from Gary Krugel to Kevin Dorsey re Swedish Hospital's termination of its (05/01/96) agreement with One Health, effective 01/15/02.	SCH002726
RX-1292	05/17/02	Swedish Covenant Hospital Competitor/Market Share Update.	SCH 004591-004620
RX-1354	10/11/02	Swedish Covenant Hospital Marketing and Strategic Planning Committee report	SCH 004654-004747
RX-1548	10/10/03	Swedish Covenant Hospital Marketing and Strategic Planning Committee report.	SCH 004802-004862
RX-1692	05/14/04	Swedish Covenant Hospital Marketing and Strategic Planning Committee report	SCH 005183-005258
RX-1342	09/27/02	Swedish Covenant Hospital Strategic Plan, Fiscal Years 2001 – 2003.	SCH 005501-005510

<b>Exhibit No.</b>	<b>Date</b>	<b>Description</b>	<b>Bates Range<sup>4</sup></b>
RX-1578	12/16/03	Swedish Covenant Hospital and Health Center Managed Care Contract Analysis.	SCH 006074-006131