

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

In the matter of))) EVANSTON NORTHWESTERN HEALTHCARE) CORPORATION,)) and)) ENH MEDICAL GROUP, INC.,)) Respondents)	Docket No. 9315
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**Third Party Northwestern Memorial Hospital's Motion
For In Camera Treatment Of Exhibit RX 1432**

Pursuant to 16 C.F.R. § 3.45(g) and the Protective Order entered in this case on March 24, 2004 ("Protective Order"), Northwestern Memorial Hospital ("NMH"), a third party to this litigation and a Producing Party under the terms of the Protective Order, respectfully moves for an order directing *in camera* treatment of pages FTC-NB-13 0000354 - 355 of Exhibit RX 1432 ("RX 1432") that counsel for Evanston Northwestern Healthcare Corp. and ENH Medical Group, Inc. (collectively, "Respondents") has designated for possible introduction at the hearing in this matter to begin on February 10, 2005. Those two pages of RX 1432, which are attached as Exhibit A, contain the current and prospective payment terms of NMH's provider participation contract with Blue Cross and Blue Shield of Illinois.¹ Public disclosure of the fee-related information contained in RX 1432 is likely to cause a direct, serious harm to NMH's competitive

¹ RX 1432 is actually a four-page excerpt of the participating provider option ("PPO") hospital contract between NMH and Blue Cross and Blue Shield of Illinois that was executed in January 2003, and has a three-year term running from January 1, 2003 through December 31, 2005.

position. *See* Exhibit B (Fennessey Declaration). Accordingly, NMH requests that the last two pages of RX 1472, which contain the current and prospective fee-related information, be held *in camera* for a period of four years, or until January 1, 2009. Neither Complaint Counsel nor Respondents' counsel objects to NMH's motion.

I. NMH'S CONFIDENTIAL CURRENT AND PROSPECTIVE FEE-RELATED INFORMATION IS ENTITLED TO *IN CAMERA* TREATMENT UNDER THE FEDERAL TRADE COMMISSION'S RULES OF PRACTICE

NMH is not a party to this proceeding; it is a third party. Under the terms of the Protective Order, it is a Producing Party. The last two pages of RX 1432 contain the current and prospective payment terms of NMH's current contract with Blue Cross and Blue Shield of Illinois ("Blue Cross"). These payment terms remain in effect through at least December 31, 2005. NMH's compensation arrangements with commercial payors, like Blue Cross, are confidential, proprietary and competitively-sensitive information that are central to NMH's business, and their public disclosure to NMH's competitors as well as to other payors would result in a direct, serious competitive injury to NMH. *See Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984); *see also Rambus, Inc.*, Dkt. No. 9302, 2003 FTC LEXIS 68, at *2 (Apr. 23, 2003) (McGuire). Because the specific, fee-related terms contained in NMH's contract with Blue Cross will not be necessary to explain the rationale of the Commission's decision in this matter, this Court should provide *in camera* treatment to those portions of RX 1432 that describe the payment terms. *See General Foods Corp.*, 95 F.T.C. 352, 355 (1980) (balancing the disclosing party's potential competitive injury from public disclosure with the Commission's interest in providing antitrust guidance to the business community and the antitrust bar); *see also Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977) (describing six-factor test for secrecy and materiality in determining appropriateness of granting *in camera* treatment to documents).

A. NMH Has Preserved The Confidentiality Of The Fee-Related Information Contained In RX 1432

NMH has taken meaningful steps to protect the confidential nature of RX 1432. With the exception of Blue Cross, NMH is unaware of any individuals or entities outside of NMH that have knowledge of or access to the payment terms contained in NMH's contract with Blue Cross. *See* Exh. B at ¶ 5 (Fennessey Declaration). To the best of NMH's knowledge, it is impossible to obtain the information contained in RX 1432 through public sources. *Id.* Indeed, the terms of the Blue Cross contract explicitly require its payment terms to be kept confidential. *See* Exhibit C at 3 (excerpt of Blue Cross contract) ("Hospital agrees to maintain the strict confidentiality of the contents of the Rate Exhibits attached to this Agreement and to disclose the contents of such Rate Exhibits only pursuant to a valid court order."). Moreover, only a limited number of employees within NMH have knowledge of or access to the payment terms in RX 1432, and they hold that information in confidence. Exh. B at ¶ 6. Specifically, only the small number of employees actively involved in negotiating, approving and/or implementing payor contracts have knowledge of their payment terms.² *Id.*

Further, NMH has taken meaningful steps to protect the confidential nature of RX 1432 during the Commission's investigation of and subsequent litigation against Respondents. NMH voluntarily produced (in lieu of a subpoena) its Blue Cross contract, now designated as RX 1432, during the Commission's pre-Complaint investigation of Respondents. When NMH learned that the Commission had initiated litigation against the Respondents and that it intended to produce NMH's documents to Respondents, NMH requested that its documents be accorded "Restricted Confidential – Attorney Eyes Only" treatment under the then newly-entered Protective Order.

² Consistent with their fiduciary duties to NMH, certain high-level employees, such as executive team members, and the Board of Directors have the right to request access to RX 1432 if desired. Exh. B at ¶ 6 (Fennessey Declaration).

See Exhibit D (Letter from J. Sneed, Esq. to J. Nolan, Esq. and M. Sibarium, Esq., dated Apr. 19, 2004). NMH subsequently re-produced to the Commission staff all of the documents it had produced during the investigation period, with a “NMH” bates prefix, and designated its Blue Cross contract, now RX 1432, as “Restricted Confidential – Attorney Eyes Only.” See Exhibit E (letter from D. Marx, Esq. to P. Nolan, Esq., dated June 2, 2004) and Exhibit F (NMH 00085-88, the re-produced copy of RX 1432).³

B. Disclosure Of The Fee-Related Information In RX 1432 Could Result In A Direct, Serious Competitive Injury To NMH

The highly confidential fee-related information in RX 1432 is central to NMH’s business and its public disclosure would have a direct, negative impact on NMH’s competitive position in the market. Payor contracts with commercial payors, such as Blue Cross, are a primary source of revenue for NMH. See Exh. B at ¶ 7 (Fennessey Declaration). A significant amount of time, effort and financial modeling are involved in negotiating each payor contract to ensure NMH’s ongoing financial viability and well-being. *Id.* at ¶¶ 7, 8. Contracts between hospitals and commercial payors have increasing importance in today’s healthcare market because they soften the financial impact of providing expensive hospital services to uninsured patients and to patients insured under federal and state insurance programs, particularly Medicare and Medicaid. *Id.* at ¶ 7. If NMH’s competitors were to gain access to the fee-related information contained in RX 1432, they could use it to undermine NMH’s relationship with Blue Cross and its negotiations

³ Respondent’s counsel has identified RX 1432 as containing bates numbers, FTC-NB-13 0000352 – 355. To avoid confusion, NMH has used this same reference in this motion. However, this document control number apparently was affixed by Commission staff to identify the otherwise unnumbered documents produced by NMH during the Commission’s pre-Complaint investigation of Respondents. When the Commission initiated its litigation against Respondents, NMH re-produced all of the previously-produced documents with a Bates prefix “NMH 00-” and the appropriate confidentiality designation under the Protective Order. It is unknown to NMH why Respondents’ counsel selected, for use as RX 1432, the document with the control number informally affixed by Commission staff rather than the document with Bates number NMH 0085-88 and the confidentiality designation of “Restricted Confidential – Attorney Eyes Only,” which was produced to the Commission with the understanding that staff would provide a copy to counsel for Respondents. NMH does not know if Respondents ever received this copy set.

with other payors. *Id.* at ¶ 8. If other commercial payors were to gain access to the information contained in RX 1432, they could use it to NMH's detriment in their negotiations with NMH. *Id.* Thus, public disclosure of RX 1432 could jeopardize NMH's ability to negotiate effectively with private payors, which would be detrimental to NMH's financial well-being.

The competitive harm to NMH from public disclosure of RX 1432 is magnified here because RX 1432 contains the current and *prospective* payment terms of NMH's contract with Blue Cross, a major payor in the market. The Blue Cross contract has a three-year term, expiring on December 31, 2005. *Id.* at ¶ 9. Further, most payor negotiations use the prior existing contract as a starting point for negotiations. Therefore, competitors and other payors would be able to accurately gauge NMH's reimbursement level for the next several years. *Id.*

The competitive harm resulting from public disclosure of payor contracts and their payment terms has been recognized in this case and others before the Commission. For example, the definition of "Restricted Confidential Discovery Material" in the Protective Order explicitly lists "payor contracts currently in force; or payor contracts not currently in force, but the disclosure of which would likely cause substantial commercial harm" as an example of "non-public, current information that is highly sensitive and the disclosure of which would likely cause substantial harm to the producing party." *See* Protective Order at 5. In *North Texas Specialty Physicians*, Judge Chappell granted *in camera* treatment of payor contracts between physician respondents and several non-party payors because he recognized the resulting competitive injury to the payors from public disclosure of this information. Dkt. No. 9312, 2004 FTC LEXIS 109, at *5-21 (Apr. 23, 2004).

In addition to the competitive harm to NMH, public access to NMH's payment terms with Blue Cross may harm competition more generally as competitors may be able to use that

information to their advantage in their negotiations with Blue Cross or other payors. If so, this could increase healthcare costs to payors and to insureds, as payors pass on their higher costs in the form of higher premiums. *See generally Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 594 (1986) (finding that low prices are the essence of competition); *see also Ball Mem'l Hosp., Inc. v. Mutual Ins. Co.*, 784 F.2d 1325 (7th Cir. 1986) (affirming the denial of injunctive relief that would “further reduce price competition between Indiana hospitals...”).

The Commission recognized the likelihood of harm to competition from this public dissemination of fee-related information in Statement Six of the Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care. U.S. Dep’t of Justice & Federal Trade Comm’n, STATEMENTS OF ANTITRUST ENFORCEMENT POLICY IN HEALTH CARE (1996), *reprinted in* 4 Trade Reg. Rep. (CCH) ¶13,153. Statement Six states in relevant part that, “[w]ithout appropriate safeguards, however, [fee-related] information exchanges among competing providers may facilitate collusion or otherwise reduce competition on prices or compensation, resulting in increased prices, or reduced quality and availability of health care services.” *Id.* (articulating safeguards to include, among others, that the information be at least three months old and that the information be sufficiently aggregated among at least five provider’s data such that it would not allow recipients to identify the prices charged by or compensation paid to any particular provider).

C. The Public Interest In Disclosure Of The Fee-Related Information In RX 1432 Is Outweighed By The Likelihood Of Serious Competitive Harm To NMH

As a third party, NMH’s request deserves “special solicitude.” *Kaiser*, 103 F.T.C. at 501. Reasonable extensions of *in camera* treatment encourage third parties to cooperate with future discovery requests by the Commission. *Id.* Here, NMH cooperated with the discovery demands in this case and took steps to facilitate access of the parties, including Evanston Northwestern

Healthcare Corporation, a competitor of NMH, to highly sensitive third-party documents. Public disclosure of RX 1432 will neither promote the resolution of this matter nor enhance the public's understanding of these proceedings. *See H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961) (explaining that the "countervailing consideration weighing in favor of disclosure should be the importance of the information in explaining the rationale of our decisions"). Knowledge of NMH's specific payment terms with Blue Cross is unnecessary, and not even particularly helpful, to the public's understanding of the competitive issues in this case.

II. NMH'S CONFIDENTIAL FEE-RELATED INFORMATION SHOULD BE ACCORDED *IN CAMERA* TREATMENT FOR FOUR YEARS, OR UNTIL JANUARY 1, 2009

The value of the current and prospective fee-related information contained in RX 1432 to NMH's business warrants lasting protection to prevent NMH's competitors and other payors from learning NMH's payment terms with a major payor in the market. RX 1432 is a current contract, with a three-year term that does not expire until at least December 31, 2005 (after that point, it automatically renews for one-year periods unless one of the parties cancels the contract). Exh. A at 2. Payor contracts are typically negotiated using the prior contract as a starting point for future negotiations. Exh. B at ¶ 9 (Fennessey Declaration). Thus, access to NMH's existing contract would allow others to fairly accurately gauge NMH's payment terms in its next contract with Blue Cross. *Id.* As such, NMH respectfully requests that the last two pages of RX 1432, which contain current fee-related information, be accorded *in camera* treatment for four years, or until January 1, 2009, at which time RX 1432 would be at least one contract old when it becomes public.

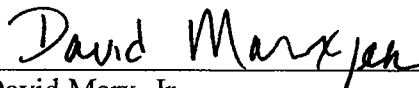
CONCLUSION

The fee-related information contained in RX 1432 satisfies the standard for *in camera* protection under the Commission's Rules of Practice and relevant Commission rulings.

Accordingly, *in camera* protection should be extended to this confidential information of NMH.

Dated: January 4, 2005

Respectfully submitted,



David Marx, Jr.
McDERMOTT, WILL & EMERY LLP
227 W. Monroe Street
Chicago, IL 60606
(312) 984-7668

James H. Sneed, Esq.
Linda M. Holleran, Esq.
McDERMOTT, WILL & EMERY LLP
600 Thirteenth Street, N.W.
Washington, D.C. 2005
(202) 756-8000

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

_____)
In the matter of)
)
EVANSTON NORTHWESTERN HEALTHCARE)
CORPORATION,)
)
and)
)
ENH MEDICAL GROUP, INC.,)
)
Respondents)
_____)

Docket No. 9315

ORDER

Upon consideration of Third Party Northwestern Memorial Health's Motion For *In Camera* Treatment Of RX 1432, any opposition thereto, and the Court being fully informed,

IT IS HEREBY ORDERED that Third Party Northwestern Memorial Hospital's Motion is GRANTED and that the following materials be provided *in camera* treatment:

Pages FTC-NB-13 0000354 – 355, which may also be labeled as
NMH 0087 -88, of Exhibit RX 1432

Date: _____

Stephen J. McGuire
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2005, I caused an original and one paper copy of Third Party Northwestern Memorial Hospital's Motion For *In Camera* Treatment of RX 1432 to be filed by hand and one electronic copy of that motion to be filed by electronic mail with:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-159
Washington, D.C. 20580

I also certify that on January 4, 2005, I caused two copies of the foregoing motion to be served by hand upon:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW (H106)
Washington, D.C. 20580

I also certify that on January 4, 2005, I caused one copy of the foregoing motion to be served by over-night express mail, postage pre-paid, on each person listed below:


Thomas H. Brock, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW (H-374)
Washington, D.C. 20580

Philip M. Eisenstat, Esq.
Federal Trade Commission
601 New Jersey Avenue, NW (NJ-5235)
Washington, D.C. 20580

Chul Pak, Esq.
Assistant Director Mergers IV
Federal Trade Commission
601 New Jersey Avenue, NW
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David Dahlquist, Esq.
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WINSTON & STRAWN, LLP
35 West Wacker Drive
Chicago, IL 60601

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



Linda M. Holleran
McDERMOTT WILL & EMERY LLP
600 Thirteenth Street, N.W.
Washington, D.C. 20005

COPY CERTIFICATION

I certify that the electronic version of THIRD PARTY NORTHWESTERN MEMORIAL HOSPITAL'S MOTION FOR IN CAMERA TREATMENT OF RX 1432 filed by electronic mail with the Secretary of the Commission is a true and accurate copy of the paper original and that a paper copy with original signature has been filed with the Secretary of the Commission on this day.

Date: January 4, 2005

By: *Linda Holleran*
Linda M. Holleran
McDERMOTT WILL & EMERY LLP
600 Thirteenth Street, N.W.
Washington, D.C. 20005

EXHIBIT A

REDACTED

EXHIBIT B

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

In the matter of)	
)	
EVANSTON NORTHWESTERN HEALTHCARE CORPORATION,)	
)	
and)	
)	Docket No. 9315
ENH MEDICAL GROUP, INC.,)	
)	
Respondents)	

**Declaration of Gary J. Fennessy In Support Of
Third Party Northwestern Memorial Hospital's Motion For
In Camera Treatment Of Exhibit RX 1432**

I, Gary J. Fennessy, under the penalty of perjury under the laws of the United States of America, declare that the following is true and correct:

1. I am the Vice President of Financial Affairs at Northwestern Memorial Hospital ("NMH") and have held that position since September 1999. I also serve as the Treasurer of Northwestern Memorial Physician Group and Northwestern Memorial Insurance Company. Over the past 20 years, I have held various management positions in the area of finance at NMH. My responsibilities as Vice President of Financial Affairs include executive oversight for the management of Managed Care, Patient Accounting, Registration, Supply Chain (Purchasing, Distribution and Contracting), and Pharmacy. Specific to Managed Care, I have the ultimate responsibility for securing, negotiating, evaluating and monitoring managed care activity for NMH.

2. NMH is not a party to the captioned matter.

3. RX 1432 is an excerpt (consisting of pages 1, 9, 13, and 14) of the participating provider option hospital contract between NMH and Blue Cross and Blue Shield of Illinois (“Blue Cross”), which was executed in January 2003, had an effective date of January 1, 2003, and remains in effect through at least December 31, 2005. NMH requests *in camera* treatment for the last two pages of RX 1432, which contain the specific inpatient and outpatient rates to be paid by Blue Cross to NMH during the years 2003 through 2005. A true and correct copy of RX 1432 is attached as Exhibit A. This document has been labeled by the Federal Trade Commission with the document control number, FTC-NB-13 0000352 – 355, and by NMH with the bates label, NMH 0085-88. Both FTC-NB-13 0000352 – 355 and NMH 0085-88 represent the same document. The specific pages for which NMH seeks *in camera* protection are FTC-NB-13 0000354 – 355 (also labeled as NMH 0087-88). For ease of reference, I will refer to this document as either “RX 1432” or the “Blue Cross contract.”

4. I have personally reviewed RX 1432. As the Vice President of Financial Affairs, I am familiar with NMH’s payor contracts and the purposes for which they are used in NMH’s operations. I was one of the individuals responsible for approving the Blue Cross contract. I am also familiar with the confidentiality protections afforded to payor contracts by NMH. For example, in the Blue Cross contract, payment terms are to be kept confidential under Art. II H, page 3, of the contract, which reads, “Hospital agrees to maintain the strict confidentiality of the contents of the Rate Exhibits attached to this Agreement and to disclose the contents of such Rate Exhibits only pursuant to a valid court order.” A true and correct copy of page 3 of the Blue Cross contract is attached as Exhibit C.

5. NMH treats the reimbursement terms of its payor contracts, including those contained in RX 1432, as confidential, proprietary information. This information is not shared outside of NMH and the information is not widely distributed within NMH. To the best of my knowledge, nobody outside of Blue Cross or NMH has knowledge of or access to the details of NMH's contract with Blue Cross, particularly the contract's payment terms. I am also unaware of any way in which someone outside of NMH or Blue Cross could obtain the information in RX 1432 from public sources.
6. Within NMH, only a handful of individuals are aware of the terms and reimbursement rates in NMH's contract with Blue Cross. These individuals include those who: i) helped negotiate the contract (including those who performed the financial modeling used in negotiations); ii) approved the contract; and who iii) implement the contract to ensure that Blue Cross is properly paying NMH according to the negotiated contract terms. This represents approximately 13 employees out of the approximately 5,800 individuals NMH employs. In addition, certain senior or executive level employees of NMH, such as the chief executive officer and other members on NMH's executive team, and the Board of Directors may ask to review the contract if they wish. All of these individuals understand the highly confidential, competitively-sensitive nature of this information and do not share it with outsiders.
7. Contracts with commercial or private payors are important to NMH's financial viability as they soften the financial impact of the unreimbursed costs NMH frequently incurs in providing care to patients who have no insurance or who are insured under government programs, such as Medicare and Medicaid. Payor contracts, particularly those with commercial payors, are one of the primary sources of revenue for NMH. For these

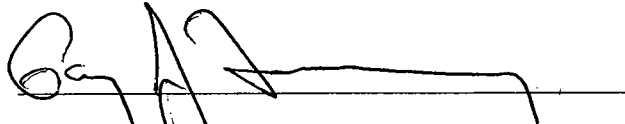
reasons, NMH spends a considerable amount of time and effort in negotiations and financial modeling to ensure that we negotiate a fair contract that will cover our costs and contribute positively to our bottom-line so that we may invest in new technologies and equipment, and expand the scope of services that we offer to patients in the community. Payors, of course, always seek to pay NMH the lowest possible reimbursement for its services. Typically, we find a middle ground that is fair for both parties.

8. Based upon my knowledge of NMH's business and NMH's negotiations of payor contracts, I believe that public disclosure of RX 1432 would cause a direct, serious competitive injury to NMH. As I explained above, commercial or private payor contracts, like the agreement with Blue Cross, are central to NMH's ongoing financial viability and well-being, and the disclosure of their reimbursement terms to NMH's competitors or to other payors would have a negative impact on NMH and our ability to effectively negotiate payor contracts. For example, if other hospitals in the market were to learn of the information in RX 1432, they potentially could use that information to damage NMH's relationship with Blue Cross or to undermine its negotiations with other payors. If other payors were to learn of the fee-related information in RX 1432, they could use it to NMH's detriment in their negotiations with NMH, particularly because there would be an imbalance in the parties' information (*i.e.*, the payors would know of NMH's rates with another payor, but NMH would not know that payor's rates with other hospitals).
9. The competitive harm from publicly disclosing the fee-related information in RX 1432 would be long-lasting because RX 1432 is a current contract with Blue Cross that does not expire until at least December 31, 2005. Because most negotiations use the prior

existing contract as a starting point for negotiations, competitors (and other payors) would be able to accurately gauge NMH's reimbursement level for the next several years.

10. Exhibit D is a true and correct copy of the letter sent from James H. Sneed, Esq., counsel for NMH, to Paul J. Nolan Esq., Commission staff member, and Michael I. Sibarium, Esq., counsel for Respondents, dated April 19, 2004.
11. Exhibit E is a true and correct copy of the letter sent from David Marx, Esq., counsel for NMH, to Paul J. Nolan, Esq., Commission staff member, dated June 2, 2004.
12. Exhibit F is a true and correct copy of an excerpt of NMH's Blue Cross Contract with the Bates label, NMH 00085-88, and the confidentiality designation of "Restricted Confidential – Attorney Eyes Only."

Date: January 3, 2005



Gary J. Fennessy

EXHIBIT C

- G. Hospital has entered into and will maintain during the Term of this Agreement a contractual relationship with Blue Cross for the provision of Covered Services to Covered Persons.

Hospital agrees to participate in Utilization Review, as provided in Article VII, and to abide by decisions resulting from that review, subject to rights of reconsideration and review provided therein.

- E. Hospital agrees to cooperate with Blue Cross towards establishing cost containment and quality improvement programs which can reasonably be expected to result in the cost effective delivery of PPO Covered Services to PPO Covered Persons. Such programs include, but are not limited to, the following: (1) pre-admission testing; (2) pre-admission review; (3) ambulatory surgery; (4) Outpatient diagnostic testing, and (5) generic drug substitution. Hospital will maintain adequate records on these programs and their utilization by PPO Covered Persons for review upon reasonable prior notice during normal business hours by Blue Cross in accordance with applicable federal and state laws and regulations. Blue Cross agrees to provide assistance to Hospital for the establishment and maintenance of its cost containment programs.

- F. Hospital represents that it is duly licensed under the Hospital Licensing Act of Illinois.

- G. Hospital agrees to notify Blue Cross in writing as soon as reasonably practicable upon any change in licensure or accreditation status by the Joint Committee on Accreditation of Hospitals or similar accrediting body, and the addition or deletion of any facility and/or program subject to such licensure or accreditation.

- H. Hospital agrees to maintain the strict confidentiality of the contents of the Rate Exhibits attached to this Agreement and to disclose the contents of such Rate Exhibits only pursuant to a valid court order.

- I.1. Certain PPO Coverage Agreements provide that certain required communications with the MSA Program be made by the Hospital. The identification cards or notices referred to in Article III, Paragraph F, and/or Blue Cross' normal admitting notification process will identify PPO Covered Persons covered under such Coverage Agreements. For all such PPO Covered Persons the Hospital agrees as follows:

- a. Prior to all non-emergency Inpatient (elective) admissions of, and prior to rendering certain Outpatient procedures designated by Blue Cross for specific groups to, PPO Covered Persons, the Hospital agrees to contact the MSA Program by telephone at a number to be supplied by Blue Cross. The Hospital shall advise the MSA Program of such pending Inpatient admission of or Outpatient procedure regarding the PPO Covered Person. Blue Cross will confirm such telephone notice to the Hospital in writing, or by notification through Blue Cross' normal electronic admitting process. Blue Cross will provide the Hospital, from time to time, with written notice 30 days in advance of the certain Outpatient procedures so designated by Blue Cross and the particular groups to which such MSA Program notification applies.
- b. In the event of an Inpatient emergency or obstetric admission, the Hospital agrees to notify Blue Cross of the admission by telephone, at a number to be supplied by Blue Cross, as soon as possible but in no event later than one (1) working day after such admission. Blue Cross will confirm such telephone notice to the Hospital in writing, or by notification through Blue Cross' normal electronic admitting process.
- c. In the event the Hospital does not notify Blue Cross of a particular Inpatient admission or certain Outpatient procedures as required in this Paragraph I, Blue Cross shall not be obligated to pay the Hospital and the Hospital shall not charge the PPO Covered Person, for any portion of the particular admission or for the certain Outpatient procedure if it is determined to be not Medically Necessary pursuant to Article VII of this Agreement entitled "Utilization Review." Hospital shall not charge the PPO Covered Person for Hospital Services determined to be not Medically Necessary, unless Hospital has obtained a written waiver from that PPO Covered Person. Hospital agrees to furnish a copy of said written waiver upon request. Lack of or late notification and/or authorization will not result in payment denial if services are determined to be Medically Necessary.

2. Blue Cross may, from time to time, inform the Hospital in writing with a 30 day advance notice of the preadmission and pre-certification processes required by other Blue Cross and/or Blue Shield Plans, the Blue Cross and Blue Shield Association ("BCBSA") National PPO Program and the BCBSA National Managed Care Program, Hospital agrees to comply with all such preadmission and pre-certification processes.

EXHIBIT D

A Partnership Including
Professional Corporations
600 13th Street, N.W.
Washington, D.C. 20005-3096
202-756-8000
Facsimile 202-756-8087
<http://www.mwe.com>

Boston
Chicago
London
Los Angeles
Miami
Moscow
Newport Beach
New York
St. Petersburg
Silicon Valley
Vilnius
Washington, D.C.

MCDERMOTT, WILL & EMERY

James H. Sneed
Attorney at Law
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202-756-8006

April 19, 2004

VIA FACSIMILE AND U.S. MAIL

Paul J. Nolan, Esq.
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Federal Trade Commission
601 New Jersey Ave., N.W.
Washington, DC 20001

Michael L. Sibarium
Winston & Strawn, LLP
1400 L Street, N.W.
Washington, DC 20005

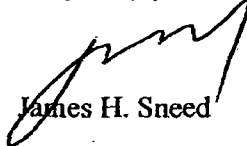
Re: *Evanston Northwestern Healthcare Corporation & ENH Medical Group, Inc.,
FTC Docket No. 9315*

Gentlemen:

I have received Mr. Nolan's March 30, 2004 letter in which he states the Commission has produced to respondents Northwestern Memorial Hospital documents that were previously produced to the Commission as part of the pre-complaint investigation. Mr. Nolan attached the protective order in this matter and invited us to designate the confidentiality of the documents pursuant to the protective order.

Pursuant to paragraph 3 of the protective order, Northwestern Memorial Hospital designates its entire production RESTRICTED CONFIDENTIAL, Attorneys Eyes Only – D.9315. We will contact you to coordinate affixing proper labels to Northwestern Memorial Hospital's production. Please contact me immediately if there are any additional steps that must be taken on behalf of Northwestern Memorial Hospital in order to ensure that all of the documents produced in the pre-complaint investigation are treated as RESTRICTED CONFIDENTIAL, Attorneys Eyes Only – D.9315 by all of the parties in this matter.

Very truly yours,



James H. Sneed

EXHIBIT E

McDermott Will & Emery

Boston Brussels Chicago Düsseldorf London Los Angeles Miami Milan
Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C.

David Marx Jr.
Attorney at Law
dmarx@mwe.com
312.984.7668

June 2, 2004

CONFIDENTIAL
VIA FEDEX

Paul Nolan, Esq.
Federal Trade Commission
Room 5255
601 New Jersey Avenue, N.W.
Washington, D.C. 20001

Re: In the Matter of Evanston Northwestern Healthcare Corporation, et al., FTC Docket No.
9315
Client-Matter No. 28974-017

Dear Paul:

Pursuant to our telephone conversations last month, I am enclosing a new set of copies of the payor contracts and contract amendments for Northwestern Memorial Hospital ("NMH") (which were previously submitted on June 30, 2003 in response to your letter dated June 17, 2003). Those documents are labeled as Bates Nos. NMH 00001-361 and are marked as "Restricted Confidential, Attorneys Eyes Only—FTC Docket No. 9315," pursuant to the Protective Order entered on March 24, 2004 by Judge McGuire.

Additionally, we are supplementing NMH's prior production with the contracts and contract amendments between NMH and HFN and One Health Plan (aka Great West) (Bates Nos. NMH 00362-522). Also, we are providing copies of contracts between NMH and payors relating specifically to organ transplants, including "single case" agreements covering organ transplants for a specific patient (whose identity has been redacted from the enclosed documents). The organ transplant documents are labeled with Bates Nos. NMH 00523-689 and, like the payor contracts and amendments, are designated as "Restricted Confidential, Attorneys Eyes Only—FTC Docket No. 9315."

Please note that we have not provided a copy of these documents to counsel for Evanston Northwestern Healthcare. We understand that you will do that.

Paul Nolan, Esq.
June 2, 2004
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If you have any questions about the enclosed documents, please call me.

Sincerely,

David Marx Jr.
David Marx Jr.

Enclosures

cc: Jeff Kurland, Esq.
David Dahlquist, Esq.

CHI99 4307780-1.028974.0017

EXHIBIT F

REDACTED