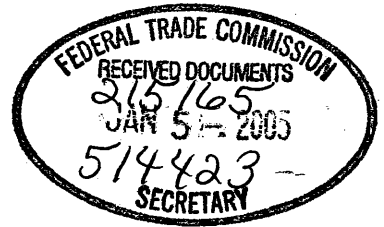


**ORIGINAL**



**UNITED STATES OF AMERICA  
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

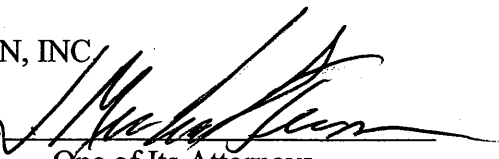
**NOTICE OF FILING**

**PUBLIC VERSION**

**MOTION FOR IN CAMERA TREATMENT OF DOCUMENTS**

To: See Attached Certificate of Service

PLEASE TAKE NOTICE that on January 4, 2005, I caused to be filed with the Federal Trade Commission - Office of the Secretary at 600 Pennsylvania Avenue, NW, Room H-159, Washington, D.C. 20580, *Non-Party HFN, Inc's Motion for In Camera Treatment of Respondents' Proposed Evidentiary Materials.*

HFN, INC  
By   
One of Its Attorneys

John P. Marren  
Laura C. Liu  
Kelly A. McCloskey  
J. Michael Tecson  
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**CERTIFICATE OF SERVICE**

I, J. Michael Tecson, an attorney, certify that a copy of the foregoing documents was served on the individuals listed below by first class mail delivery, proper postage prepaid, on January 4, 2005:

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

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

And that one copy was served on the Honorable Stephen McGuire by personal delivery to:

The Honorable Stephen J. McGuire  
Office of the Administrative Law Judges  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Room 113  
Washington, DC 20580

And that one copy was served on Complaint Counsel by personal delivery to:

Thomas Brock, Esq.  
600 Pennsylvania Avenue, NW  
Room H-360  
Washington, DC 20580

Dated: January 4, 2005

**UNITED STATES OF AMERICA  
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

**NON-PARTY HFN, INC.'S MOTION FOR IN CAMERA TREATMENT OF  
RESPONDENTS' PROPOSED EVIDENTIARY MATERIALS**

**PUBLIC VERSION**

HFN, Inc. ("HFN") which is not a party to the above-captioned action, respectfully requests that this Court grant in camera treatment of certain documents that respondents Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc. (collectively "Respondents") have designated for introduction into evidence in the administrative trial in this matter.

**I. Introduction**

By correspondence dated December 22, 2004, Respondents notified HFN that it intends to introduce into evidence documents produced by HFN in response to a subpoena issued by Respondents. Due to the confidential nature of the documents to be produced in this matter, the Commission entered a protective order on March 24, 2004 governing the production of documents. HFN produced documents subject to the March 24, 2004 order, and thus all documents HFN produced are granted "Confidential" status in accordance with paragraphs 2(a)

and 3 of the Protective Order. The confidential documents, for which in camera treatment is sought, are listed as follows:

<b>HFN, Inc.'s Exhibits</b>	<b>HFN, Inc.'s Bates Nos.</b>	<b>Respondents' Exhibit Nos.</b>
1	HFC 00068-74	RX-1840
2	HFN 00515	RX-1803
3	HFN 00516-40	RX-1830

As discussed in more detail below, and as set forth in the Declaration of Ronald Craven, Vice President of Provider Network Management for HFN, the information in the above documents reveal non-public, competitively sensitive information and is held in strict confidence by HFN, the disclosure of which would be highly damaging to HFN. HFN submits that the documents contain information that is secret and material to its current and prospective business. Under the standard set forth in 16 C.F.R. § 3.45(b), the Court should enter an order granting in camera treatment to the documents specified in this motion.

## **II. Standard for In Camera Treatment of Materials**

Documents containing non-public information warrant in camera treatment when “public disclosure will likely result in a clearly defined, serious injury... to the corporation requesting their in camera treatment.” 16 C.F.R. § 3.45(b). In order to demonstrate “serious injury,” the party seeking in camera treatment should show that the subject information is: 1) secret and 2) material to the applicant’s business. See In the Matter of General Foods Corp., 95 F.T.C. 352, (1980). In considering the secrecy and materiality of the information, an Administrative Law Judge should weigh the following factors: “(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the

information could be properly acquired or duplicated by others.” In the Matter of Bristol-Myers Co., et al., 90 F.T.C. 455 (1977) (citation omitted). An Administrative Law Judge is granted broad discretion in deciding what types of materials may be granted in camera treatment. See General Foods Corp., 95 F.T.C. 352 (1980); see also In the Matter of Bristol-Myers Co., et al., 90 F.T.C. 455 (1977) (stating that “consideration of in camera treatment of materials is left to the “sound discretion of the administrative law judge”). Moreover, public policy dictates that third party requests for in camera treatment of confidential business records and information “deserve special solicitude.” In the Matter of Kaiser Aluminum & Chemical Corp., 103 F.T.C. 500 (1984) (order directing in camera treatment for sales statistics over five years old).

### **III. Public Disclosure of HFN’s Documents will Cause HFN Serious Injury**

The information contained in each of the Exhibits 1-3 listed above, is confidential and public disclosure of such information would cause serious competitive injury to HFN. HFN expends a considerable amount of money and effort in creating the information contained in these exhibits and in maintaining the confidentiality of this information.

Exhibit 1, hereto [respondents’ proposed evidentiary exhibit RX-1840] discusses the managed health care plans that HFN offers and also addresses the plans’ rates, terms and conditions. See Craven Declaration at ¶4. Public disclosure of this information would provide HFN’s competitors with sensitive pricing and contracting terms causing serious and irreparable competitive injury to HFN. Id.

Exhibit 2, hereto, [respondents’ proposed evidentiary exhibit RX-1803] contains information regarding one of HFN’s programs and also includes the form service agreements and reimbursement schedules. See Craven Declaration at ¶5. This information is HFN’s unique program and also includes formulas for HFN’s reimbursement schedule. Id. The public

disclosure of this information would provide HFN competitors with the unique terms of one of its plans, including the basis by which it calculates its reimbursement rates under the plan, and would result in loss of business advantage and serious irreparable injury to HFN. Id.

Exhibit 3, hereto [respondents' proposed evidentiary exhibit RX-1830] contains the sales and marketing initiative for the plan discussed in Exhibit 2 [proposed evidentiary exhibit RX-1803] above. See Craven Declaration at ¶6. Exhibit 3 contains confidential information regarding the need for the plan, marketing efforts of the plan, the names of the network partners in the plan and a sample letter to employers. Id. The public disclosure of this information would provide HFN's competitors with confidential information regarding the marketing and development of one of its unique plans and would result in a loss of business advantage and serious irreparable competitive harm to HFN.

Based upon the above facts, and the details set forth more fully in the Declaration of Ronald Craven, HFN has adequately demonstrated the secrecy and materiality set forth in Bristol-Myers, and therefore, should be afforded in camera status for the documents listed and described herein.

#### **IV. In Camera Treatment for the Above Documents Should Be Indefinite**

The nature of the highly confidential information contained in the documents, for which in camera protection is sought, if publicly disclosed, would place HFN at a significant competitive disadvantage in the marketplace. The documents disclose confidential business information, business decisions as well as strategies for the future. The information will continue to be of a sensitive nature for some time. The information relates to HFN's ongoing and future business practices and will remain secret and material to HFN for the foreseeable future. The length of in camera protection may be significantly extended where the information

in question will remain competitively sensitive. See e.g. In the Matter of E.I. DuPont de Nemours & Co., 2000 WL 1877720, F.T.C. (Dec. 21, 2000) (extending in camera protection of documents for an additional ten years beyond the initial ten year protection period). For these reasons, HFN respectfully requests in camera treatment for the above documents for an indefinite period of time. Alternatively, HFN requests that the court grant in camera treatment for the above documents for a period of not less than ten (10) years.

Respectfully submitted,

HFN, Inc.

By: 

One of Its Attorneys

John P. Marren  
Laura C. Liu  
Kelly A. McCloskey  
J. Michael Tecson  
Hogan Marren, Ltd.  
180 N. Wacker Drive, Suite 600  
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(312) 946-1800

**PUBLIC VERSION**

**PROPOSED ORDER**

On January 4, 2005, Non-Party HFN, Inc. ("HFN") filed a motion for in camera treatment of confidential business information contained in certain documents that have been identified by respondents Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc. (collectively "Respondents") as potential evidentiary exhibits.

IT IS HEREBY ORDERED that HFN's motion for in camera treatment of these document is GRANTED. The information set forth in the HFN documents numbered as follows will be subject to in camera treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding for an indefinite period of time.

<b>HFN, Inc.'s Bates Nos.</b>
HFC 00068-74
HFN 00515
HFN 00516-40

IT IS FURTHER ORDERED that only authorized Federal Trade Commission ("Commission") personnel, and court personnel concerned with judicial review may have access to the above-referenced information, provided that I, the commission, and reviewing courts may disclose such in camera information to the extent necessary for the proper disposition of the proceeding.

ORDERED:

\_\_\_\_\_  
Administrative Law Judge

Dated: \_\_\_\_\_



**EXHIBIT LIST**

Exhibit 1 – [REDACTED]

Exhibit 2 – [REDACTED]

Exhibit 3 – [REDACTED]

**DECLARATION OF RONALD CRAVEN  
IN SUPPORT OF NON-PARTY HFN, INC.'S MOTION FOR IN CAMERA  
TREATMENT OF CERTAIN DESIGNATED HEARING EXHIBITS**

1. I, Ronald Craven, declare and state as follows:

2. I am Vice President of Provider Network Management for HFN, Inc. ("HFN"). I have held this position for 4 ½ years. On behalf of HFN, I negotiate contracts with hospitals, providers and other healthcare entities that provide healthcare services in a group health plan.

3. I submit this declaration in support of Non-Party HFN's Motion for In Camera Treatment of Certain Designated Hearing Exhibits. I have reviewed Exhibits 1 through 3 of HFN's motion which are the documents for which HFN seeks in camera treatment. By virtue of my position at HFN, I am familiar with the information contained in the subject documents. Based upon my knowledge of the documents and my knowledge of HFN's business, it is my belief that disclosure of these documents to the public and/or to HFN's competitors would cause serious harm to HFN.

4. Exhibit 1, which was prepared in 2003, discusses the managed health care plans that HFN's offers and also addresses the plans' rates, terms and conditions. This document contains highly sensitive information relating to the rates and terms of its health network agreements. The public disclosure of this information would provide HFN's competitors with sensitive pricing and contracting terms, causing serious and irreparable competitive injury to HFN.

5. Exhibit 2, which was prepared in 2003, contains confidential information regarding one of HFN's programs and also includes the form service agreements and reimbursement schedules. The information in Exhibit 2 includes the terms of HFN's unique program and also includes formulas for HFN's reimbursement schedule. The public disclosure

of this information would provide HFN competitors with the unique terms of one of its plans, including the basis by which it calculates its reimbursement rates under the plan. The public disclosure of this information would result in a loss of business advantage and serious irreparable injury to HFN.

6. Exhibit 3, which was prepared in 2003, for the plan discussed in Exhibit 2. Exhibit 3 contains confidential information regarding the need for the plan, marketing efforts of the plan, the names of the network partners in the plan and a sample letter to employers. The public disclosure of this information would provide HFN's competitors with confidential information regarding the marketing and development of one of its unique plans and would result in a loss of business advantage and serious irreparable competitive harm to HFN.

7. HFN continues to use the information contained in Exhibits 1 through 3 in order to compete in the managed care industry.

8. HFN has expended a significant amount of money and resources in the development of the program addressed in Exhibits 1 through 3.

9. HFN takes every reasonable step in order to protect the confidentiality of the information contained in Exhibits 1 through 3. It would be extremely difficult for HFN's competitors to obtain the information in the subject documents.

10. The information contained in Exhibits 1 through 3 is material to HFN's business and competitiveness. Disclosure of the information contained in the documents would result in a loss of business advantage and cause serious irreparable injury to HFN.

I declare, under penalty of perjury, that the above statements are true and correct.

Executed this 4<sup>th</sup> day of January, 2005

  
Ronald Craven