

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

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

**RESPONDENTS' REPLY TO ADVOCATE HEALTH CARE'S RESPONSE TO
RESPONDENTS' MOTION TO COMPEL THIRD PARTY DISCOVERY**

Respondents Evanston Northwestern Healthcare and ENH Medical Group (collectively "Respondents") hereby file this Reply to Advocate Health Care's ("Advocate") September 10, 2004 Response to Respondents' Motion to Compel Third Party Discovery.

Advocate has provided no legitimate excuse for its failure to respond to four document subpoenas served on the hospital system almost *five* months ago. Advocate does not, because it simply cannot, assert that it raised any timely objection to Respondents' subpoenas. Instead, Advocate argues, without citation to any authority, that it need not respond to Respondents' subpoenas because it has already produced documents as part of an unrelated FTC investigation as well as an unrelated "complex commercial arbitration involving private antitrust claims." *See* Advocate Response at 3. Respondents appreciate the external pressures that Advocate may be experiencing. Nevertheless, Respondents should not be required to wait at the back of the line while Advocate addresses "other matters." *See* Advocate Resp. at 3. Further, Respondents should not be required to review 60-70 boxes of documents produced in "other

matters" merely to determine if anything contained within those boxes are responsive to Respondents' subpoenas.¹

As detailed in Respondents' Motion to Compel, Respondents are seeking discrete categories of documents. *See* Respondents Mot. to Compel at 7. While Respondents' subpoenas *duces tecum* request numerous categories of documents, Respondents are primarily seeking the production of the following documents and/or data:

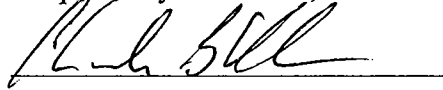
- Complete contract files with third party payors, including correspondence (Requests 2 and 26)
- Strategic plans and market studies (Requests 3 and 4)
- Patient origin data (Request 14)
- Charge Description Master (Request 31)

Respondents have yet to receive any assurances from Advocate that these categories of documents are contained within the productions prepared for the "other matters" cited by Advocate. Therefore, Respondents ask this Court to enter the proposed Order attached to this Reply, which requires the immediate production of these responsive documents. Such discrete documents and data should be separately organized in the ordinary course of business and relatively easy to obtain. Respondents reserve their right to file a future motion to compel seeking the production of additional responsive materials.

¹ At the time Respondents' Motion to Compel was filed, Respondents believed that the documents produced in response to these "other matters" and those produced to Complaint Counsel during the investigation in this matter, were one in the same. On August 18, 2004, in a telephone conversation between Respondents counsel and counsel for Advocate, arrangements were being made for Respondents to have access to Advocate's "other matter" productions. During that conversation, Respondents were informed that some, if not all, of the documents in the "other matter" productions were also part of Advocate's prior production made to Complaint Counsel during the investigation in this matter. Respondents had previously provided Advocate with the bates numbers of all documents it had received from Complaint Counsel and asked counsel for Advocate to determine if the documents

DATED: September 13, 2004

Respectfully submitted,



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were in fact distinct from that initial production. After failing to receive any additional information regarding the production, Respondents filed its Motion to Compel on August 27, 2004.

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ORDER

Upon consideration of Respondents' Motion to Compel Advocate Health Care to Produce Documents Requested by Subpoena Duces Tecum, and any opposition thereto, and the Court being fully informed,

IT IS HERBY ORDERED that Respondents' Motion is GRANTED.

IT IS FURTHER ORDERED that within seven (7) days of issuance of this Order, Advocate shall provide full and complete responses to Requests numbers 2, 3, 4, 14, 26 and 31 in the subpoenas *duces tecum* served on or about April 19, 2004 on the following four Chicago area hospitals owned and operated by Advocate Health Care: (1) Advocate Good Sheppard Hospital, (2) Advocate Lutheran General, (3) Advocate North Side Health Network (a/k/a Advocate Illinois Masonic Medical Center), and (4) Advocate Ravenswood Hospital Medical Center.

Date: _____

Stephen J. McGuire
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2004, a copy of the foregoing Respondents' Reply to Advocate Health Care's Response to Respondents' Motion to Compel Third Party Discovery was served by email and first class mail, postage prepaid, on:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave. NW (H-106)
Washington, DC 20580
(two courtesy copies delivered by messenger only)

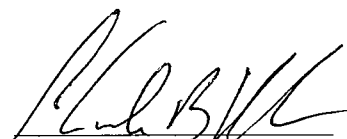
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