

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



\_\_\_\_\_  
In the Matter of )  
 )  
 )  
OSF Healthcare System, )  
a corporation, and )  
 )  
Rockford Health System, )  
a corporation. )  
\_\_\_\_\_ )

Docket No. 9349  
**PUBLIC**

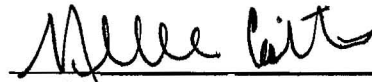
**RESPONDENT ROCKFORD HEALTH SYSTEM'S MOTION TO COMPEL  
EMPLOYERS' COALITION ON HEALTH TO PRODUCE DOCUMENTS  
REQUESTED BY SUBPOENA DUCES TECUM**

Respondent Rockford Health System ("Respondent" and "RHS") respectfully submits this Motion to Compel Employers' Coalition on Health ("ECOH") to Produce Documents Requested by Subpoena *Duces Tecum*, pursuant to Rule 3.38(a) of the Federal Trade Commission's Rules of Adjudicative Practice and Paragraphs 4 and 5 of the Scheduling Order.

Counsel for Respondent has attempted to confer in good faith with counsel for ECOH in an effort to obtain the requested documents without the Court's intervention. Respondent and ECOH have been unable to reach an agreement, therefore Respondent respectfully moves the Court for an Order requiring the immediate production of documents for the reasons set forth in Respondent's accompanying Memorandum in support of this motion.

Dated: February 6, 2012

Respectfully submitted,



David Marx, Jr.  
William P. Schuman  
Amy J. Carletti  
McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, IL 60606  
Telephone: (312) 372-2000  
Facsimile: (312) 984-7700  
dmarx@mwe.com  
wschuman@mwe.com  
acarletti@mwe.com

Jeffrey W. Brennan  
Carla A. R. Hine  
Nicole L. Castle  
Rachael V. Lewis  
Daniel G. Powers  
James B. Camden  
McDermott Will & Emery LLP  
600 13th Street, N.W.  
Washington, D.C. 20005-3096  
Telephone: (202) 756-8000  
Facsimile: (202) 756-8087  
jbbrennan@mwe.com  
chine@mwe.com  
ncastle@mwe.com  
rlewis@mwe.com  
dgpowers@mwe.com  
jcamden@mwe.com

*Attorneys for Respondent Rockford Health  
System*

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Rockford Health System,	)	
a corporation.	)	
_____	)	

**PROPOSED ORDER**

Upon consideration of Respondent's Motion to Compel Employers' Coalition on Health to Produce Documents Requested by Subpoena *Duces Tecum* and any opposition thereto,

IT IS HEREBY ORDERED that Respondent's Motion is GRANTED.

IT IS FURTHER ORDERED that Employers' Coalition on Health shall immediately take all necessary steps toward producing to Respondent all subpoenaed documents responsive to Respondent's subpoena *duces tecum* as soon as possible. The production shall be completed within one (1) week from the issuance of this Order.

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Date: \_\_\_\_\_, 2012

## CERTIFICATE OF SERVICE

I, Rachael V. Lewis, hereby certify that I served a true and correct copy of the foregoing Motion to Compel Employers' Coalition on Health to Produce Documents Requested by Subpoena *Duces Tecum* and Proposed Order upon the following individuals by hand on February 6, 2012:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room 172  
Washington, DC 20580

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

I, Rachael V. Lewis, hereby certify that I served a true and correct copy of the foregoing Motion to Compel Employers' Coalition on Health to Produce Documents Requested by Subpoena *Duces Tecum* and Proposed Order upon the following individuals by electronic mail on February 6, 2012:

Troy A. Brinson, Esq.  
Momkus McCluskey, LLC  
1001 Warrenville Road, Suite 500  
Lisle, IL 60532  
tbrinson@momlaw.com

*Counsel for Employers' Coalition on Health*

Matthew J. Reilly  
Jeffrey H. Perry  
Kenneth W. Field  
Richard Cunningham, Esq.  
Jeremy P. Morrison  
Katherine A. Ambrogi  
Andrea Zach  
Jeanne Liu  
Stephanie Reynolds  
Theresa Lau  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580  
mreilly@ftc.gov  
jperry@ftc.gov

kfield@ftc.gov  
rcunningham@ftc.gov  
jmorrison@ftc.gov  
kambrogi@ftc.gov  
azach@ftc.gov  
jliu@ftc.gov  
sreynolds@ftc.gov  
tlau@ftc.gov

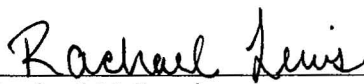
*Complaint Counsel*

Alan I. Greene  
Matthew J. O'Hara  
Kristin M. Kurczewski  
Hinshaw & Culbertson LLP  
222 N. LaSalle Street, Suite 300  
Chicago, IL 60601  
Telephone: (312) 704-3000  
Facsimile: (312) 704-3001  
agreene@hinshawlaw.com  
mohara@hinshawlaw.com  
kkurczewski@hinshawlaw.com

Michael Iasparro  
Hinshaw & Culbertson LLP  
100 Park Avenue  
Rockford, IL  
Telephone: (815) 490-4945  
Facsimile: (815) 490-4901  
miasparro@hinshawlaw.com

*Attorneys for Respondent OSF Healthcare System*

Dated: February 6, 2012

  
\_\_\_\_\_  
Rachael V. Lewis  
*Counsel for Respondent  
Rockford Health System*

**UNITED STATES OF AMERICA  
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Rockford Health System,	)	
a corporation.	)	
_____	)	

**STATEMENT REGARDING MEET AND CONFER  
PURSUANT TO 16 C.F.R. § 3.22(g)**

On February 6, 2012, I, Rachael Lewis, on behalf of McDermott Will & Emery LLP (“McDermott”) as counsel for Rockford Health System conferred by electronic mail at approximately 11:32 a.m. EST, 12:33 p.m. EST, and 1:27 p.m. EST and telephonically at 1:22 p.m. EST with Troy A. Brinson, counsel for ECOH, regarding Respondent’s Motion to Compel Employers’ Coalition on Health to Produce Documents Requested by Subpoena *Duces Tecum*.

McDermott and counsel for ECOH discussed these issues in correspondence on January 17, 2012 January 20, 2012, January 25, 2012, January 26, 2012, January 27, 2012, January 30, 2012, February 3, 2012, and February 6, 2012. Additionally, McDermott met with counsel for ECOH by conference call, including on December 23, 2011, January 6, 2012, January 27, 2012, and February 6, 2012. During these calls, I was present for McDermott and Troy Brinson was present for ECOH. On January 27, 2012, Daniel Powers was also present for McDermott. During the telephone call on February 6, 2012, Counsel for ECOH was unable to commit to when ECOH’s production would be complete or what documents ECOH would agree to produce in response to the subpoena requests. As a result of these communications it was concluded that McDermott and ECOH were at an impasse regarding the issues raised in the foregoing Motion.

Dated: February 6, 2012

Respectfully submitted,

By: Rachael Lewis

David Marx, Jr.

William P. Schuman

Amy J. Carletti

McDermott Will & Emery LLP

227 West Monroe Street

Chicago, IL 60606

Telephone: (312) 372-2000

Facsimile: (312) 984-7700

dmarx@mwe.com

wschuman@mwe.com

acarletti@mwe.com

Jeffrey W. Brennan

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Daniel G. Powers

James B. Camden

McDermott Will & Emery LLP

600 13th Street, N.W.

Washington, D.C. 20005-3096

Telephone: (202) 756-8000

Facsimile: (202) 756-8087

jbrennan@mwe.com

chine@mwe.com

ncastle@mwe.com

rlewis@mwe.com

dgpowers@mwe.com

jcamden@mwe.com

*Attorneys for Respondent Rockford Health  
System*

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**MEMORANDUM IN SUPPORT OF RESPONDENT ROCKFORD HEALTH SYSTEM'S  
MOTION TO COMPEL EMPLOYERS' COALITION ON HEALTH TO PRODUCE  
DOCUMENTS REQUESTED BY SUBPOENA *DUCES TECUM***

Respondent Rockford Health System (“RHS” or “Respondent”) respectfully submits this Memorandum in Support of its Motion to Compel Employers’ Coalition on Health (“ECO”) to Produce Documents Requested by Subpoena *Duces Tecum*, pursuant to Rule 3.38(a) of the Federal Trade Commission’s Rules of Adjudicative Practice and Paragraphs 4 and 5 of the Scheduling Order.

**FACTUAL BACKGROUND**

RHS served a subpoena *duces tecum* (“Subpoena”) in the instant proceeding on ECOH on December 21, 2011. (See Exhibit A). The Subpoena is one of several subpoenas *duces tecum* issued by the Commission on Respondent’s behalf, pursuant to Rule 3.34(b) of the Commission’s Rules of Adjudicative Practice. Respondent’s Subpoenas were directed to managed care organizations (“MCOs”), including ECOH, doing business in the areas served by Respondent’s hospital, including Winnebago, Ogle, and Boone counties in Illinois. The Subpoena calls for certain documents from the period of January 1, 2007 to the present, to be produced for inspection on January 10, 2012.



ECOH objected to the Subpoena on the grounds that, *inter alia*, the requests were “overly broad,” “unduly burdensome,” and “not reasonably calculated to lead to the discovery of admissible evidence,” and that ECOH considered the requested documents to be “confidential, competitively sensitive or personally sensitive.”<sup>1</sup> (*See* Exhibit B, Objections to Third Party Request for Production). On January 6, 2012, RHS’s Counsel attempted in good faith to negotiate a resolution of these concerns with ECOH’s Counsel. RHS’s Counsel agreed to review ECOH’s prior production of documents to the FTC before continuing to meet and confer on RHS’s outstanding Subpoena requests. RHS’s counsel informed ECOH that, according to the documents ECOH previously produced to the FTC, ECOH (1) produced some documents to the FTC that are also responsive to Respondent’s Subpoena Request Nos. 1-3, 18, and 24-25<sup>2</sup>, (2) needed to produce supplemental information in response to Subpoena Request Nos. 2, 6, 18, and 25, and (3) did not produce any documents to the FTC responsive to Respondent’s Subpoena Request Nos. 5, 7-17, and 19-23. (*See* Exhibit C, Jan. 17, 2012 Letter from R. Lewis). RHS requested that ECOH produce the outstanding documents by January 20, 2012. On January 20, 2012, Counsel for ECOH stated that he had not yet conferred with ECOH regarding the outstanding requests. (*See* Exhibit D, Jan. 20, 2012 Email from T. Brinson). RHS’s counsel continued attempting in good faith to negotiate a resolution ECOH’s concerns with ECOH’s Counsel. (*See* Exhibit E, Jan. 25, 26, and 27, 2012 Emails). On January 27, RHS’s Counsel met and conferred on the outstanding items. Counsel for ECOH confirmed that ECOH did not have responsive documents for Request Nos. 7, 12-13, and 19-24. Counsel for ECOH stated that he

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<sup>1</sup> ECOH did not serve objections in response to the subpoena duces tecum issued by the Commission on Respondent’s behalf, pursuant to Rule 3.34(b) of the Commission’s Rules of Adjudicative Practice.

<sup>2</sup> Counsel for ECOH represented that ECOH previously produced claims data to the FTC in response to the FTC’s Civil Investigative Demand. ECOH stated that this data is also responsive to Respondent’s Subpoena Request No. 25. In fact, the data ECOH provided to the FTC does not comply fully with Respondent’s Request No. 25 (e.g., the data does not cover up through December 2011), but Respondent is not moving to compel production of additional data under this Request.

would confirm with his client as to whether the client would produce documents responsive to Request Nos. 2, 5-6, 8-11, 14-16, and 18. On January 30, 2012 and February 3, 2012, RHS's Counsel requested confirmation of whether or not ECOH intended to produce documents responsive to the Subpoena responsive to Request Nos. 2, 5-6, 8-11, 14-16, and 18. (*See Exhibit F, Jan. 30 & Feb 3, 2012 Emails from R. Lewis*). To date, ECOH has produced no supplemental documents in response to Subpoena Request Nos. 2 and 18, and has produced no documents in response to Subpoena Request Nos. 5-6, 8-11, and 14-16.

Among the eleven outstanding Subpoena Requests are the following examples: 1) Subpoena Request No. 2, which seeks documents reflecting ECOH's financial performance related to its health plans; 2) Subpoena Request No. 5, which seeks identification of ECOH's employer customers; 3) Subpoena Request No. 8, which seeks documents related to health plans offered by ECOH; 4) Subpoena Request No. 18, which seeks documents relating to ECOH's negotiations with providers of general acute care inpatient hospital services in the areas served by Respondent's hospital, including Winnebago, Ogle, and Boone counties in Illinois; and 5) Subpoena Request No. 19, which seeks documents relating to pricing models that compare rates for hospital services.

It is urgently important that Respondent receives prompt production of these requested documents. On February 16 and 17, 2012, RHS is scheduled to take the depositions of ECOH's Executive Director, Mr. Paul Brand and ECOH's Director of Provider Services, Mr. William Pocklington (*See Exhibit G*). Timely receipt of these materials is necessary for Respondent to have adequate opportunity to review them in preparation for the depositions. ECOH's refusal to comply with the Subpoena, coupled with the impending close of discovery on February 17, 2012, leaves Respondent with no recourse but to seek the Court's intervention at this time.

## ARGUMENT

The Commission's Rules of Adjudicative Practice provide that Respondent has the right to "obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations in the complaint, to the proposed relief, or to the defenses of any respondent." 16 C.F.R. § 3.31(c)(1); *In re Polypore Int'l, Inc.*, 2009 FTC LEXIS 41, at \*8 (Jan. 15, 2009). The Commission has held that the party requesting a subpoena is only required to show that the information sought is "reasonably expected to be 'generally relevant to the issues raised by the pleadings.'" *In re Rambus, Inc.*, 2002 FTC LEXIS 90, at \*9 (Nov. 18, 2002) (quoting *In re Kaiser Aluminum & Chem. Corp.*, 1976 FTC LEXIS 68, at \*4 (Nov. 12, 1976)). Therefore, the relevancy of the information sought by a subpoena is determined by "'laying the subpoena along side' the pleadings." *Rambus*, 2002 FTC LEXIS 90, at \*9 (quoting *Kaiser*, 1976 FTC LEXIS 68, at \*5).

Evaluating Respondent's Subpoena "along side the Complaint" demonstrates that the Subpoena seeks materials reasonably expected to yield information that is relevant, material, and critical to Respondent's defense. For example, to rebut the Commission's allegation that the Acquisition will "increase Respondents' ability and incentive to unilaterally demand higher reimbursement rates from commercial health plans" (Compl. ¶ 40), Respondents require information concerning MCOs' negotiations with providers, as well as and information concerning MCOs' pricing models that compare contract rates in the relevant area. (*See* Subpoena Request Nos. 18-19 (Exhibit A)). To rebut the Commission's allegation that the acquisition will adversely affect competition for inclusion in each health plan's provider network (Compl. ¶¶ 43-45), Respondents require information concerning MCOs' health plans, including documents reflecting ECOH's financial performance related to its health plans. (*See* Subpoena Request No. 2 (Exhibit A)).

Indeed, the Subpoena seeks documents that are reasonably expected to yield relevant information, as the requests are tailored to seek only documents that are relevant to the factual issues raised by the allegations in the Commission's Complaint. Therefore, Respondent seeks the immediate production of ECOH's responsive documents as they are pertinent to Respondent's defense in this matter. Without the requested documents, Respondent will not have ample opportunity to "develop those facts which are essential" to its defense. *In re Gen. Foods.*, No. 9085, 1978 FTC LEXIS 412, at \*6 (April 18, 1978).

ECOH's claim that the Subpoena imposes an undue burden lacks both factual and legal support and is undermined by ECOH's unwillingness to negotiate the scope of the subpoena with counsel for RHS. A non-party's allegation that a subpoena imposes a burden is "insufficient to carry its burden of showing why the requested discovery should be denied." *Polypore*, 2009 FTC LEXIS 41, at \*10. Indeed, "[t]he burden of showing that the request is unreasonable is on the subpoenaed party." *Polypore*, 2009 FTC LEXIS 41, at \*9 (quoting *FTC v. Dresser Indus.*, 1977 U.S. Dist. LEXIS 16178, at \*13 (D.D.C. April 26, 1977)). This is a heavy burden – one that "is not easily met where, as here, the agency inquiry is pursuant to a lawful purpose." *Polypore*, 2009 FTC LEXIS 41, at \*9 (quoting *FTC v. Dresser Indus.*, 1977 U.S. Dist. LEXIS 16178, at \*13 (D.D.C. April 26, 1977) (enforcing non-party subpoena served by respondent) (internal quotations omitted)); see also *Rambus*, 2002 FTC LEXIS 90, at \*9 (non-party "bears the burden to show that compliance would seriously disrupt its business operations"); *In re Flowers Indus., Inc.*, 1982 FTC LEXIS 96, at \*15 (March 19, 1982) ("a recipient of a subpoena duces tecum issued in an FTC adjudicative proceeding who resists compliance therewith bears a heavy burden. That burden is no less because the subpoena is directed at a non-party."); *In re Kaiser Aluminum & Chem. Corp.*, 1976 FTC LEXIS 68, at \*19-20 (Nov. 12, 1976) ("Even

where a subpoenaed third party adequately demonstrates that compliance with a subpoena will impose a substantial degree of burden, inconvenience, and cost, that will not excuse producing information that appears generally relevant to the issues in the proceeding.”).

ECOH’s claim that the documents requested are “confidential, competitively sensitive or personally sensitive” (Exhibit B) is insufficient to overcome ECOH’s burden to produce responsive documents. *Flowers*, 1982 FTC LEXIS 96, at \*11 (assertion that the information requested “involves sensitive, financial and trade data does not limit the power to obtain it.”). Respondent’s need for this material far outweighs ECOH’s concern about the information’s sensitive nature. Furthermore, the provisions of the Protective Order Governing Discovery Material Order in this proceeding protect ECOH’s information against improper use and disclosure. Indeed, the Commission recognizes the need for information of a sensitive nature and has held that in antitrust cases, records of this nature “are not only *not* immune from inquiry, but are precisely the source of the most relevant evidence.” *Id.* at \*12. (emphasis added).

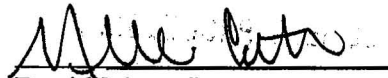
In light of RHS’s efforts to resolve these disputes, and in consideration of the fast approaching discovery deadline, it is essential that Respondent immediately receives the requested materials to proceed with the noticed depositions and meet the current discovery deadline.

### **CONCLUSION**

For all of the foregoing reasons, RHS respectfully requests that the Court grant its Motion and issue an Order requiring ECOH’s immediate production of documents.

Dated: February 6, 2012

Respectfully submitted,



David Marx, Jr.  
William P. Schuman  
Amy J. Carletti  
McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, IL 60606  
Telephone: (312) 372-2000  
Facsimile: (312) 984-7700  
dmarx@mwe.com  
wschuman@mwe.com  
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600 13th Street, N.W.  
Washington, D.C. 20005-3096  
Telephone: (202) 756-8000  
Facsimile: (202) 756-8087  
jbrennan@mwe.com  
chine@mwe.com  
ncastle@mwe.com  
rlewis@mwe.com  
dgpowers@mwe.com  
jcamden@mwe.com

*Attorneys for Respondent Rockford Health  
System*

## CERTIFICATE OF SERVICE

I, Rachael V. Lewis, hereby certify that I served a true and correct copy of the foregoing Memorandum in Support of Respondent Rockford Health System's Motion to Compel Employers' Coalition on Health to Produce Documents Requested by Subpoena *Duces Tecum* upon the following individuals by hand on February 6, 2012:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room 172  
Washington, DC 20580

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

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Troy A. Brinson, Esq.  
Momkus McCluskey, LLC  
1001 Warrenville Road, Suite 500  
Lisle, IL 60532  
tbrinson@momlaw.com

*Counsel for Employers' Coalition on Health*

Matthew J. Reilly  
Jeffrey H. Perry  
Kenneth W. Field  
Richard Cunningham, Esq.  
Jeremy P. Morrison  
Katherine A. Ambrogi  
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Jeanne Liu  
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Theresa Lau  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580  
mreilly@ftc.gov

jperry@ftc.gov  
kfield@ftc.gov  
rcunningham@ftc.gov  
jmorrison@ftc.gov  
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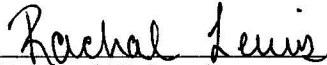
*Complaint Counsel*

Alan I. Greene  
Matthew J. O'Hara  
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Hinshaw & Culbertson LLP  
222 N. LaSalle Street, Suite 300  
Chicago, IL 60601  
Telephone: (312) 704-3000  
Facsimile: (312) 704-3001  
agreene@hinshawlaw.com  
mohara@hinshawlaw.com  
kkurczewski@hinshawlaw.com

Michael Iasparro  
Hinshaw & Culbertson LLP  
100 Park Avenue  
Rockford, IL  
Telephone: (815) 490-4945  
Facsimile: (815) 490-4901  
miasparro@hinshawlaw.com

*Attorneys for Respondent OSF Healthcare System*

Dated: February 6, 2012

  
\_\_\_\_\_  
Rachael V. Lewis  
*Counsel for Respondent  
Rockford Health System*



**UNITED STATES OF AMERICA  
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)

Docket No. 9349  
**PUBLIC**

**EXHIBIT A**



# SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

1. TO  
Employers' Coalition on Health  
c/o Paul Brand, Executive Director  
1639 N. Alpine Rd.  
Rockford, IL 61107

2. FROM  
  
**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION  
  
McDermott Will & Emery LLP  
600 13th Street, N.W.  
Washington, D.C. 20005

4. MATERIAL WILL BE PRODUCED TO  
Rachael Lewis, McDermott Will & Emery LLP

5. DATE AND TIME OF PRODUCTION  
January 10, 2012 at 9:00 am

6. SUBJECT OF PROCEEDING  
  
In the Matter of OSF Healthcare System and Rockford Health System, Docket No. 9349

7. MATERIAL TO BE PRODUCED  
  
See Schedule A

8. ADMINISTRATIVE LAW JUDGE  
  
Honorable D. Michael Chappell  
Chief Administrative Law Judge  
  
Federal Trade Commission  
Washington, D.C. 20580

9. COUNSEL AND PARTY ISSUING SUBPOENA  
  
Rachael Lewis  
McDermott Will & Emery, LLP  
202-756-8709  
Counsel for Respondent Rockford Health System

DATE SIGNED  
12/21/2011

SIGNATURE OF COUNSEL ISSUING SUBPOENA  
*R Lewis*

### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)*

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

*on the person named herein on:*

December 21, 2011

(Month, day, and year)

James Camden

(Name of person making service)

Associate, McDermott Will & Emery LLP

(Official title)

## SCHEDULE A

### DEFINITIONS

1. "Communication" means any transmission or exchange of information of any kind between individuals or companies in any manner, whether verbal, written, electronic, or otherwise, whether direct or through an intermediary.
2. "Computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, you should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, work stations, minicomputers, mainframes, servers, archive disks and tapes, and other forms of offline storage, whether on or off company premises.
3. "Document" or "documents" shall mean all materials and electronically stored information, excluding invoices and bills of lading, that are subject to discovery under Subpart D of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, 16 C.F.R. §§ 3.31-3.39, all non-identical copies of those materials and electronically stored information, and identical copies of those materials and electronically stored information that were sent from, delivered to, or maintained by, different person(s).
4. "Health plan" means any health maintenance organization, preferred provider arrangement or organization, managed healthcare plan of any kind, self-insured health benefit plan, other employer or union health benefit plan, Medicare, Medicaid, TRICARE, or private or governmental healthcare plan or insurance of any kind.
5. "Hospital" means a facility that provides Relevant Services.

6. "Physician organization" means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners or employers, or in which only one physician practices medicine, such as a physician group.

7. "RHS" shall refer to Rockford Health System, its subsidiaries, affiliates, partnerships and joint ventures.

8. "Relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating, evaluating, recommending, setting forth, or supporting.

9. "Relevant Area" means Winnebago, Ogle, and Boone Counties in Illinois.

10. "Relevant Hospitals" means all hospitals located in the Relevant Area.

11. "Relevant Services" means (1) general acute care inpatient hospital services (*e.g.*, the provision of all inpatient hospital services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities, excluding the treatment of mental illness or substance abuse, or long-term services such as skilled nursing care), and (2) primary care physician services (*e.g.*, services provided by physicians practicing in internal medicine, family practice, and general practice, excluding services provided by pediatricians, obstetricians, and gynecologists).

12. "Relevant Transaction" means the transaction pursuant to which Rockford Health System will be integrated into the healthcare system of OSF Healthcare System ("OSF").

13. "OSF" shall refer to OSF Healthcare System and its subsidiaries, affiliates, partnerships, and joint ventures.

14. "You" or "Your" shall refer to the party on whom this Subpoena is served or any other person acting under the party's direction or control and all persons acting or purporting to act on its behalf, including its officers, directors, employees, agents, and attorneys.

15. The use of the singular shall be deemed to include the plural and vice versa. The terms "and" and "or" have both conjunctive and disjunctive meanings. The terms "each," "any," and "all" mean "each and every." The past tense form shall be construed to include the present tense, and vice versa, whenever such a dual construction will serve to bring within the scope of any of these requests any documents or information that would otherwise not be within their scope.

### INSTRUCTIONS

1. The document requests are intended to cover all documents in your possession, custody, or control, regardless of where they are located or who may actually have physical possession of them.

2. Documents and things shall be produced as they are kept in the ordinary course of business. Documents produced, regardless of format or form and regardless of whether submitted in hard copy or electronic format, shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in your files. Documents shall not be shuffled or rearranged. All documents shall identify the files from which they are being produced. All documents shall be produced in color, where necessary to interpret the document. All documents shall be marked on each page with corporate identification and consecutive document control numbers.

3. Documents shall be accompanied by an affidavit of an individual competent to testify that any copies are true, correct and complete copies of the original documents.

4. Documents shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that RHS representatives determine prior to submission that the machine-readable form is in a format that allows RHS to use the computer files).

5. These requests shall be deemed to be continuing and to require supplementation, pursuant to the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, 16 C.F.R. §3.31(e).

6. Unless otherwise indicated, these requests cover the time period of January 1, 2007 to the present.

7. Identify the code definitions used in response to Request 25 (e.g., DRG or MS-DRG and version number), including the dates on which you implemented changes to those code definitions. If you use a proprietary procedure coding system, please provide a master list of those codes with a brief description of each and its associated weight value if used for billing.

8. To protect a patient's or individual's privacy, you shall mask any sensitive personally identifiable information, or sensitive health information, including but not limited to, an individual's social security number, medical records, or other individually identifiable health information.

9. Unless otherwise indicated, you are not required to produce documents that you already provided to the Federal Trade Commission in response to a Civil Investigative Demand or Subpoena *Duces Tecum* related to the Relevant Transaction or that you have already provided

to the issuer of this subpoena in response to a subpoena issued in the related case before the Northern District of Illinois, *Federal Trade Commission v. OSF Healthcare System and Rockford Health System*, Case No. 3:11-cv-50344 (N.D. Illinois).

10. Documents stored in electronic or hard copy format shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:

- (a) Submit Microsoft Access, Excel, and PowerPoint in native format with extracted text and metadata;
- (b) Submit all other documents in image format with extracted text and metadata; and
- (c) Submit all hard copy documents in image format accompanied by OCR.

11. For each document, submitted in electronic format, include the following metadata fields and information:

- (a) For loose documents stored in electronic format other than email: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, and MD5 or SHA Hash value;
- (b) For emails: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, to, from, CC, BCC, subject, date and time sent, Outlook Message ID (if applicable), child records (the beginning Bates or document identification number of attachments delimited by a semicolon);
- (c) For email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date



and time, modification date and time, last accessed date and time, size, location or path file name, parent record (beginning Bates or document identification number of parent email), and MD5 or SHA Hash value; and

(d) For hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.

12. Submit electronic files and images as follows:

(a) For productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosures;

(b) For productions under 10 gigabytes, CD-R, CD-ROM and DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats; and

(c) All documents produced in electronic format shall be scanned for and free of viruses.

13. If you withhold from production any document responsive to these requests based on a claim of privilege, identify: (1) the type of document (letter, memo, e-mail, etc.); (2) the document's authors or creators; (3) the document's addressees and recipients; (4) the document's general subject matter; (5) all persons to whom the document or any portion of it has already been revealed; (6) the source of the document; (7) the date of the document; and (8) the basis for withholding the document.

14. If you have reason to believe that documents responsive to a particular request once existed but no longer exist for reasons other than the ordinary course of business or the implementation of your document retention policy, state the circumstances under which they

were lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they are responsive, and identify persons having knowledge of the content of such documents.

15. The official responsible for preparing the subpoena response shall appear with the documents on the return date. However, you may comply with this subpoena by making full return of all documents or exhibits specified in this subpoena to RHS counsel at the following address: Rachael Lewis, McDermott Will & Emery LLP, 600 13th Street, NW, Washington, D.C. 20005.

### **DOCUMENT REQUESTS**

1. Documents relating to your communications with the Federal Trade Commission or the Illinois Attorney General's office regarding the Relevant Transaction, including but not limited to correspondence, interview notes, negotiations regarding the production of documents voluntarily or in response to any Civil Investigative Demand or Subpoena *Duces Tecum*, or factual proffers or declarations, including drafts.

2. Documents sufficient to show, for each year, your overall financial performance and your financial performance relating to your sale or administration of health plans in the Relevant Area, including but not limited to documents reporting overall revenues and profits, and documents showing revenues and profits derived from health plan premiums and fees for administrative services only ("ASO") agreements.

3. Separately for each year from January 1, 2001 to the present, your provider directories, or documents sufficient to identify each hospital, outpatient facility, and primary care physician in your network of providers available to your members residing in the Relevant Area.

4. Documents sufficient to identify your in-network providers, if any, of the Relevant Services in: the Quad Cities (Moline and Rock Island, Illinois, and Davenport and Bettendorf, Iowa); Champaign-Urbana, Illinois; Springfield, Illinois; and Bloomington-Normal, Illinois.

5. Documents identifying each of your employer customers based or operating in the Relevant Area with memberships exceeding fifty (50) employees, and for each employer customer, the health plans offered, services provided, and the hospitals and primary care physicians (e.g., physicians practicing in internal medicine, family practice, and general practice) included in those health plans' provider networks.

6. Documents sufficient to show the number of covered lives or members in each health plan product you offered in the Relevant Area from January 1, 2001 to the present.

7. Documents, including all member surveys, studies, or analyses of any type, that assess for the Relevant Area:

a. member preferences regarding health plan provider network composition, including preferences regarding single- or multiple-hospital networks and hospitals located outside the Relevant Area;

b. member willingness to travel for care; and

c. member perceptions of the relative quality of care provided by hospitals.

8. Documents relating to your consideration of or plan to offer new or different health plan products in the Relevant Area that include the Relevant Services, including products comprised of a different provider network.

9. Documents sufficient to show how you choose which physicians to include in your networks to provide Relevant Services in the Relevant Area, including physicians not located in the Relevant Area.

10. Documents sufficient to show how you choose which hospitals to include in your networks to provide Relevant Services in the Relevant Area, including hospitals not located in the Relevant Area.

11. Documents relating to your evaluation of the marketability and competitiveness of your health plans' provider networks in the Relevant Area, including evaluations of the level and type of services provided, quality of care, hospital accreditation and geographic location of your network providers.

12. Documents relating to any communications between individuals responsible for managing your hospital and physician networks and individuals in your sales group regarding your health plan networks in the Relevant Area, including but not limited to discussions regarding member or employer feedback, marketability or quality of the network, proposed or desired changes to the provider network, and product pricing.

13. Documents relating to how reimbursement rate changes for Relevant Services impact the healthcare costs, rates or premiums of employers, including self-insured employers.

14. Documents relating to any studies, discussions, or analyses of the marketability, commercial appeal, viability of, or your ability to offer, a provider network in the Relevant Area for the Relevant Services that only includes one hospital system located in the Relevant Area, including but not limited to analyses of desired hospital charge discounts for single-hospital networks, projected employer premium rates, and the relative strengths of the different Rockford hospitals as the provider in a single-hospital network.

15. Documents, including any studies or analyses, relating to competition between health plans in the Relevant Area for employers or health plan members from January 1, 2001 to the present, including but not limited to documents assessing the impact of offering a single-hospital network, documents relating to refusals by potential customers to switch to your network, and documents relating to efforts to expand your health plans' provider network during this time period.

16. Documents sufficient to show that having a second hospital in your provider network in the Relevant Area has improved your ability to negotiate desired contract terms with Rockford Health System.

17. Documents sufficient to identify who negotiates or is involved in the negotiation of provider contracts with hospitals and primary care physicians for your health plans offered in the Relevant Area from January 1, 2005 to the present.

18. Documents relating to your negotiations with providers of the Relevant Services in the Relevant Area from January 1, 2005 to the present, including but not limited to documents relating to contract proposals, drafts, and communications between you and providers of Relevant Services in the Relevant Area; documents identifying key or "must-have" hospitals, outpatient facilities, or primary care physicians in the Relevant Area; documents analyzing the geographic coverage of providers; documents, information, and data relied upon during contract negotiations (such as quality measures, member utilization patterns, and employer or member feedback regarding your provider network or product offerings); documents relied upon to determine whether proposed reimbursement rates are comparable to those you pay to other providers of Relevant Services in the Relevant Area; documents reflecting whether to include or exclude any hospital or hospital system, or physician or physician organization in your provider

network, communications regarding any provider's desire to exclude any other providers from a health plan; and copies of the final provider contracts, including any amendments or modifications, for Relevant Services in the Relevant Area.

19. Documents relating to pricing models that compare the rates of the Relevant Hospitals for Relevant Services and outpatient services to any hospital or provider in the Relevant Area or in Illinois, including documents that you use to determine how actual or proposed contracts with the Relevant Hospitals compare to each other and how those contracts compare to contracts they have with other insurance carriers.

20. Documents relating to the cost-to-charge ratio for Relevant Services for any hospital in Illinois, including the Relevant Hospitals.

21. Documents relating to financially incentivizing your health plan members to seek Relevant Services at lower cost providers within the State of Illinois, including any plans or programs encouraging health plan members' physicians to use lower cost hospitals, and any other programs that you use to incentivize consumers or members to seek Relevant Services at lower cost providers.

22. Documents relating to the Relevant Transaction, including any studies, discussions, or analyses of the Relevant Transaction's impact on your health plan business, on your health plan rates for the Relevant Services, or on your continuation of business operations in the Relevant Area.

23. Documents relating to any studies, discussions, or analyses of the Relevant Transaction's impact on your members in the Relevant Area, including but not limited to the Relevant Transaction's impact on premiums, administrative service fees, or health care costs.

24. Documents relating to any rules or procedures you apply to providers in the Relevant Area to determine whether a patient receiving Relevant Services may be classified as an inpatient or outpatient patient for reimbursement purposes.

25. Submit (in electronic, machine readable format), for each year from January 1, 2007 to the present, for any inpatient admission for any patient residing in the State of Illinois:

a. the identity of the hospital, healthcare facility, or physician practice at which the patient was treated, including the owner of the hospital, healthcare facility, or physician practice, the address of the hospital, healthcare facility, or physician practice, including 5-digit ZIP code, and any hospital, healthcare facility, or physician practice identification number used for reimbursement purposes;

b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, you shall mask personal identifying information, such as the patient's name or Social Security number, by substituting a unique patient identifier); if you are providing data in multiple records for the inpatient admission, a unique identifier for the admission or visit shall also be included in each record associated with the admission or visit

c. the patient's residence 5-digit ZIP code;

d. the patient's age (in years), gender, and race;

e. whether the treatment episode was inpatient; if inpatient, the date of admission and date of discharge;

f. the primary associated DRG, MDC, and primary and secondary and ICD9 diagnosis and procedure codes;

- g. whether the treatment provided was for an emergency;
- h. the source of the patient referral (such as by referral from another hospital, or by a physician who does not admit the patient);
- i. the specific name of the entity and type of health plan (such as HMO, POS, PPO, etc.) that was the principal source of payment and including identifiers for the customer group (e.g., small group, large group), customer name, and whether the customer group was self-insured;
- j. for each product listed in Request 25(i), identify whether this product is offered through a managed care contract with Medicare, Medicaid, or other public health insurance program;
- k. whether the hospital, healthcare facility, or physician practice identified in response to Request 25(a) was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital, healthcare facility, or physician practice was in;
- l. whether there was a capitation arrangement with a health plan covering the patient and, if so, identify the arrangement;
- m. the billed charges of the hospital, healthcare facility, or physician practice, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan includes any adjustments under any stop-loss provisions, and any additional amounts paid by the patient;
- n. any breakdown of the hospital's, healthcare facility's, or physician practice's charges by any categories of hospital services rendered to the patient (such as



medical/surgical, obstetrics, pediatrics, or ICU) for which you provide reimbursement to the hospital, healthcare facility, or physician practice at different per diem or other rates;

o. the identity of the patient's admitting physician and, if different, the identify of the treating physician;

p. the amount of any reimbursement by you to any physicians, separately from any reimbursement to the hospital, healthcare facility, or physician practice for any physician services associated with admission or treatment, or for any services associated with covered treatments or diagnoses identified in Request 25(m); and

q. the patient's status (*e.g.*, normal discharge, deceased, transferred to another hospital, etc.) upon discharge.

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

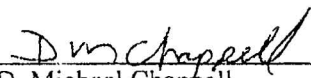
\_\_\_\_\_  
In the Matter of )  
 )  
OSF Healthcare System )  
a corporation, and )  
 )  
Rockford Health System )  
a corporation, )  
Respondents. )  
\_\_\_\_\_ )

DOCKET NO. 9349

**PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL**

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

  
\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: November 18, 2011

## ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

**IT IS HEREBY ORDERED THAT** this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL-FTC Docket No. 9349" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL-FTC Docket No. 9349 or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

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

_____	)	
In the Matter of	)	
	)	
OSF Healthcare System,	)	Docket No. 9349
a corporation, and	)	<b>PUBLIC</b>
	)	
Rockford Health System,	)	
a corporation.	)	
_____	)	

**EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS,  
WESTERN DIVISION

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	Case No.: 3:11-cv-50344
v.	)	
	)	Hon. Frederick Kapala,
OSF HEALTHCARE SYSTEM	)	District Judge
	)	
and	)	Hon. P. Michael Mahoney,
	)	Magistrate Judge
ROCKFORD HEALTH SYSTEM,	)	
	)	
Defendants.	)	

**OBJECTIONS TO THIRD PARTY REQUEST FOR PRODUCTION DIERED AT  
EMPLOYERS COALITION ON HEALTH**

Comes Now EMPLOYERS COALITION ON HEALTH ("ECO"), by and through its attorneys, MOMKUS, MCCLUSKEY, LLC, and submits these Objections to the Subpoena of Rockford Health System ("RHS") pursuant to Rules 26, 34 and 45 of the Federal Rules of Civil Procedure.

**GENERAL OBJECTIONS AND STATEMENTS**

1. ECOH reserves the right to supplement and revise these objections should it discover additional grounds for objection.
2. Each and every General Objection is fully incorporated into each Response below, as if fully restated therein.
3. ECOH objects to RHS's Definitions and Instructions as overly broad, unduly burdensome, outside the scope of the FTC Civil Investigative Demand, and to the extent they impose burdens upon ECOH beyond that reasonably calculated to lead to relevant, discoverable, information, or by imposing burdens upon

ECOH beyond that required by the Federal Rules of Civil Procedure and or the Federal Rules of Evidence.

4. ECOH objects to the scope RHS's discovery requests in that a request for discovery must have a relevant time frame so as not to make it overly broad and unduly burdensome and in violation of the good faith requirements that are set forth by the Federal Rules of Civil Procedure. RHS's Request for Production of Documents (the "Document Requests") do not have a reasonable time frame set forth, but instead request documents dating back as far as ten years, without restriction as to whether Respondent has such materials in its possession.
5. ECOH objects to RHS's requests to the extent that they seek documents not within ECOH's custody, control, or would require ECOH to discern, assert, or waive an objection by the FTC. For example, Request no. 1 seeks "interview notes" and "negotiations" in "the Relevant Transaction." Such notes are either in the possession of the FTC, or, if taken by ECOH, are for ECOH individual and internal purposes are work product and were non-responsive to the FTC Civil Investigative Demand. "Negotiations" are likewise non-responsive and, moreover, would be inadmissible.
6. ECOH objects to the document requests to the extent that they call for documents or information that are confidential, competitively sensitive or personally sensitive (collectively, "confidential" information or documents). ECOH further notes that there is currently no protective order in place in the federal matter that would protect confidential documents produced by third parties such as ECOH in the present proceeding. However, ECOH does note



that it turned over certain documents to the FTC under a protective agreement/order that was then in effect under administrative proceedings culminating in the FTC issuing, and ECOH responding to a Civil Investigative Demand, pursuant to FTC File Number 111-0102. ECOH further contends that any and all documentation provided to the FTC continues to be protected under said protective agreement/order. Accordingly, the FTC and the Civil Investigative Demand defined the scope of relevant documents, which ECOH had no part in determining. Any documents previously produced to the FTC should be made available by the FTC at its own, or RHS's expense, and subject to the protections agreed to with ECOH. Requesting said documents from ECOH is unduly burdensome and duplicative as ECOH is a non-party, and is not a direct competitor with RHS, therefore having no stake or interest in the FTC's scope of investigation or said investigation's outcome.

7. Furthermore, the current proposed drafts of a protective order that has been circulated in the current matter would not provide adequate protection in that they would allow such documents to be seen by in-house counsel and business executives of ECOH's competitors, or by RHS and OSF. In this connection, ECOH notes that the protective order in place in the FTC's administrative proceeding relating to the Relevant Transaction does not allow in-house counsel or business executives of the parties to have access to confidential documents. Furthermore, the proposed drafts of the protective order in the present federal proceeding would require ECOH to make a determination as to every single document produced regarding whether it should be subject to the protective

order and to label each document that required such protection. This requirement is unduly burdensome for ECOH given its status as a third party to this matter. Responding to said requests is even more burdensome to this respondent as they are a relatively small third party administrator with tangential connections to the matter currently before the Court. A more reasonable alternative would be to allow third parties to produce only what was produced to the FTC, at RHS's costs and to designate all of their documents as confidential and subject to any prior protective agreement and or order. Thereby placing the burden on the parties to designate any particular items for which they wished to have the confidential designation removed. ECOH could then review those particular documents and determine whether the confidentiality designation was necessary. ECOH will produce responsive documents that it deems confidential and that it does not otherwise object to producing on privilege or other grounds only once an adequate protective order is in place, and if they are within the scope of the FTC Civil Investigative Demand and production thereto, subject to any and all protective agreements and or orders at the time of the original production.

8. ECOH further objects to each and every request because, during the FTC's investigation of this matter, in which ECOH was not an interested party, the FTC merely requested some information of its own choosing, from third parties like ECOH. Conversely, the interested parties, such as RHS and OSF, had a full and complete opportunity to advocate their position, economically, statistically or otherwise. Therefore, requests such as No. 7 (solely as one example), seek

additional information from ECOH when RHS and OSF should have, or could have addressed the issue with the FTC directly. Thus, any failure by RHS and OSF to do so prior is not a relevant or discoverable issue now. RHS and OSF produced information to the FTC prior, which resulted in any decision or finding. Seeking additional information from parties like ECOH now is irrelevant.

9. To the extent that ECOH aggregated public information and processed said information pursuant to its own internal process in making business decisions, such process is a trade secret and is not discoverable, as it would force respondent to reveal not only relevant information relied on in making decisions, but would necessarily reveal respondent's decision making process itself, and would serve no other purpose than to allow Defendants to obtain respondents Trade Secret information for its own purposes, apart and aside from the litigation at bar and place respondent at an economic and financial disadvantage in the relevant marketplace, regardless of the outcome of the current litigation.

### **OBJECTIONS TO DOCUMENT REQUESTS**

1. Documents relating to your communications with the Federal Trade Commission or the Illinois Attorney General's office regarding the Relevant Transaction, including but not limited to correspondence, interview notes, negotiations regarding the production of documents voluntarily or in response to any Civil Investigative Demand or Subpoena Duces Tecum, or factual proffers or declarations, including drafts.

**Response 1.** Objection. This Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further objecting, ECOH objects to this request on the grounds that the parties would have received all material submitted to the Federal Trade Commission from the Federal Trade Commission, and that other documents related to discussions or submissions to the Federal Trade Commission are protected by the attorney client privilege and the work product privilege. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further responding, any non-privileged documents which might be responsive to Request No. 1, were provided to the FTC in response to the Civil Investigation Demand (CID) issued to ECOH. Said

documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. It would represent a substantial and economic burden on ECOH to obtain reproduce said documents when they are available to Defendant in another form.

2. Documents sufficient to show, for each year, your overall financial performance and your financial performance relating to your sale or administration of health plans in the Relevant Area, including but not limited to documents reporting overall revenues and profits, and documents showing revenues and profits derived from health plan premiums and fees for administrative services only ("ASO") agreements.

**Response 2.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, this request is wholly irrelevant to the matter currently before the Court, as ECOH is not a party subject to the Relevant Transaction, and revealing information regarding its financial health will serve no useful purpose in the pending litigation.

3. Separately for each year from January 1, 2001 to the present, your provider directories, or documents sufficient to identify each hospital, outpatient facility, and primary care physician in your network of providers available to your members residing in the Relevant Area.

**Response 3.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. By way of further response, ECOH notes that it has already produced documents responsive to this request to the Federal Trade Commission. Further responding, any non-privileged documents which might be responsive to Request No. 3, were provided to the FTC in response to the Civil Investigation Demand (CID) issued to ECOH. Said documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. It would represent a substantial and economic burden on ECOH to obtain reproduce said documents when they are available to Defendant in another form.

4. Documents sufficient to identify your in-network providers, if any, of the Relevant services in: the Quad Cities (Moline and Rock Island, Illinois, and Davenport and Bettendorf, Iowa); Champaign-Urbana, Illinois; Springfield, Illinois; and Bloomington-Normal, Illinois.

**Response 4.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant.

Further objecting, ECOH notes that the present request from Defendant defines "Relevant Area" to include Winnebago, Ogle, and Boone Counties of Illinois, none of which include the above referenced facilities. Therefore, this request is wholly irrelevant, and responding to the same would represent a substantial and economic burden on ECOH to obtain and produce said documents.

5. Documents identifying each of your employer customers based or operating in the Relevant Area with memberships exceeding fifty (50) employees, and for each employer customer, the health plans offered, services provided, and the hospitals and primary care physicians (e.g., physicians practicing in internal medicine, family practice, and general practice) included in those health plans' provider networks.

**Response 5.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, ECOH asserts that said information constitutes proprietary and trade secret information of ECOH, as well as its member "employer customers". Therefore, without express authority from said customers, ECOH cannot respond to said request without significantly exposing itself to privacy claims by said employers.

6. Documents sufficient to show the number of covered lives or members in each health plan product you offered in the Relevant Area from January 1, 2001 to the present.

**Response 6.** Objection. This Request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, said request is not relevant, as ECOH is not a named party to the current matter and the number of lives covered by any of ECOHs plans are irrelevant to Plaintiff's complaint. Further responding, any non-privileged documents which might be responsive to Request No. 6, were provided to the FTC in response to the Civil Investigation Demand (CID) issued to ECOH. Said documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. It would represent a substantial and economic burden on ECOH to obtain reproduce said documents when they are available to Defendant in another form.

7. Documents, including all member surveys, studies, or analyses of any type, that assess for the Relevant Area:

a. member preferences regarding health plan provider network composition, including preferences regarding single- or multiple-hospital networks and hospitals located outside the Relevant Area;

b. member willingness to travel for care; and

- c. member perceptions of the relative quality of care provided by hospitals.

**Response 7.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Given that the parties, OSF and RHS, both provide services in the same geographic area, they are equally capable of providing information on patients' preferences. It would represent a substantial and economic burden on ECOH to obtain reproduce said documents when they such analysis is equally available to Defendant in another form.

8. Documents relating to your consideration of or plan to offer new or different health plan products in the Relevant Area that include the Relevant Services, including products comprised of a different provider network.

**Response 8.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence, as the Federal Trade Commission's complaint alleges two relevant markets, the acute inpatient care market and the physician market. Further objecting, any plans, whether past, present or future that have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, the entirety of this request is vague and ambiguous.

9. Documents sufficient to show how you choose which physicians to include in your networks to provide Relevant Services in the Relevant Area, including physicians not located in the Relevant Area.

**Response 9.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such decision process, whether past, present or future that may or may not have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations. ECOH further objects to this request in that it requires ECOH to not only disclose its Trade Secret information as to how certain physicians are chosen, but also those that are not. Further still, this request requires ECOH to determine which category, or what part of its selection process is relevant to Defendant's claims or defenses. Therefore, ECOH objects on the grounds that it is actually a contention interrogatory, and is premature for ECOH to answer. The necessary evidence is in the possession of the FTC or Defendants. Defendants are attempting to force ECOH to disclose their strategy,

in this case if it were to be named as a party or in business generally, or to force it to set forth all bases for these processes prior to completion of discovery. "[C]ontention interrogatories require the answering party to commit to a position and give factual specifics supporting its claims. The general policy is to defer contention interrogatories until discovery is near an end." Ziemack v. Centel Co., No. 92 C 3551, 1995 U.S. Dist. LEXIS 18192 (N.D.Ill. Dec. 6, 1995). Because discovery and claim investigation can change contentions and supporting information, contention interrogatories, if allowed at all, should be used only at the end of the discovery period. In re Convergent Technologies Securities Litigation, 108 F.R.D. 328, 335 (N.D.Cal. 1985). Here, the FTC has made a decision, and OTS and RHS have had a complete opportunity to address any questions or inquire with the FTC directly. Attempting to require ECOH to, now, discern all of the facts and contentions either supporting that decision or negating it is improper. Further objecting, ECOH notes that the present request from Defendant defines "Relevant Area" to include Winnebago, Ogle, and Boone Counties of Illinois, none of which include the above referenced facilities. Therefore, to the extent that this request seeks information regarding providers outside of that specified area, it is wholly irrelevant, and responding to the same would represent a substantial and economic burden on ECOH to obtain and produce said documents. Further responding, ECOH has provided a list of providers within its networks to the FTC, pursuant to its 2011 CID. Said documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. ECOH, does not believe it is obligated to produce such documents again pursuant to this Subpoena, as responding to the same would represent a substantial and economic burden on ECOH.

**10.** Documents sufficient to show how you choose which hospitals to include in your networks to provide Relevant Services in the Relevant Area, including hospitals not located in the Relevant Area.

**Response 10.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such decision process, whether past, present or future that may or may not have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations. ECOH further objects to this request in that it requires ECOH to not only disclose its Trade Secret information as to how certain physicians are chosen, but also those that are not. Further still, this request requires ECOH to determine which category, or what part of its selection process is relevant to Defendant's claims or defenses. Therefore, ECOH objects on the grounds that it is actually a contention interrogatory, and is premature for ECOH to answer. The necessary evidence is in the possession of the FTC or

Defendants. Defendants are attempting to force ECOH to disclose their strategy, in this case if it were to be named as a party or in business generally, or to force it to set forth all bases for these processes prior to completion of discovery. "[C]ontention interrogatories require the answering party to commit to a position and give factual specifics supporting its claims. The general policy is to defer contention interrogatories until discovery is near an end." Ziemack v. Centel Co., No. 92 C 3551, 1995 U.S. Dist. LEXIS 18192 (N.D.Ill. Dec. 6, 1995). Because discovery and claim investigation can change contentions and supporting information, contention interrogatories, if allowed at all, should be used only at the end of the discovery period. In re Convergent Technologies Securities Litigation, 108 F.R.D. 328, 335 (N.D.Cal. 1985). Here, the FTC has made a decision, and OTS and RHS have had a complete opportunity to address any questions or inquires with the FTC directly. Attempting to require ECOH to, now, discern all of the facts and contentions either supporting that decision or negating it is improper. Further objecting, ECOH notes that the present request from Defendant defines "Relevant Area" to include Winnebago, Ogle, and Boone Counties of Illinois, none of which include the above referenced facilities. Therefore, to the extent that this request seeks information regarding providers outside of that specified area, it is wholly irrelevant, and responding to the same would represent a substantial and economic burden on ECOH to obtain and produce said documents. Further responding, ECOH has provided a list of providers within its networks to the FTC, pursuant to its 2011 CID. Said documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. ECOH, does not believe it is obligated to produce such documents again pursuant to this Subpoena, as responding to the same would represent a substantial and economic burden on ECOH.

**11.** Documents relating to your evaluation of the marketability and competitiveness of your health plans' provider networks in the Relevant Area, including evaluations of the level and type of services provided, quality of care, hospital accreditation and geographic location of your network providers.

**Response 11.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such decision process, whether past, present or future that may or may not have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations. ECOH further objects to this request in that it requires ECOH to not only disclose its Trade Secret information as to how certain physicians are chosen, but also those that are not. Further still, this request requires ECOH to determine which category, or what part of its selection process is relevant to Defendant's claims or defenses. Therefore, ECOH objects on the grounds that it is actually a contention interrogatory, and is premature for ECOH



to answer. The necessary evidence is in the possession of the FTC or Defendants. Defendants are attempting to force ECOH to disclose their strategy, in this case if it were to be named as a party or in business generally, or to force it to set forth all bases for these processes prior to completion of discovery.

"[C]ontention interrogatories require the answering party to commit to a position and give factual specifics supporting its claims. The general policy is to defer contention interrogatories until discovery is near an end." Ziemack v. Centel Co., No. 92 C 3551, 1995 U.S. Dist. LEXIS 18192 (N.D.Ill. Dec. 6, 1995). Because discovery and claim investigation can change contentions and supporting information, contention interrogatories, if allowed at all, should be used only at the end of the discovery period. In re Convergent Technologies Securities Litigation, 108 F.R.D. 328, 335 (N.D.Cal. 1985). Here, the FTC has made a decision, and OTS and RHS have had a complete opportunity to address any questions or inquire with the FTC directly. Attempting to require ECOH to, now, discern all of the facts and contentions either supporting that decision or negating it is improper. Further objecting, any such evaluations, whether past, present or future that have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations.

**12.** Documents relating to any communications between individuals responsible for managing your hospital and physician networks and individuals in your sales group regarding your health plan networks in the Relevant Area, including but not limited to discussions regarding member or employer feedback, marketability or quality of the network, proposed or desired changes to the provider network, and product pricing.

**Response 12.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such decision process, whether past, present or future that may or may not have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations. ECOH further objects to this request in that it requires ECOH to not only disclose its Trade Secret information as to how certain physicians are chosen, but also those that are not. Further still, this request requires ECOH to determine which category, or what part of its selection process is relevant to Defendant's claims or defenses. Therefore, ECOH objects on the grounds that it is actually a contention interrogatory, and is premature for ECOH to answer. The necessary evidence is in the possession of the FTC or Defendants. Defendants are attempting to force ECOH to disclose their strategy, in this case if it were to be named as a party or in business generally, or to force it to set forth all bases for these processes prior to completion of discovery. "[C]ontention interrogatories require the answering party to commit to a position and give factual specifics supporting its claims. The general policy is to defer

contention interrogatories until discovery is near an end." Ziemack v. Centel Co., No. 92 C 3551, 1995 U.S. Dist. LEXIS 18192 (N.D.Ill. Dec. 6, 1995). Because discovery and claim investigation can change contentions and supporting information, contention interrogatories, if allowed at all, should be used only at the end of the discovery period. In re Convergent Technologies Securities Litigation, 108 F.R.D. 328, 335 (N.D.Cal. 1985). Here, the FTC has made a decision, and OTS and RHS have had a complete opportunity to address any questions or inquire with the FTC directly. Attempting to require ECOH to, now, discern all of the facts and contentions either supporting that decision or negating it is improper. Further objecting, any such communications and feedback regarding the same, whether past, present or future, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market. By way of further response, ECOH notes that it has already produced data to the Federal Trade Commission that includes product pricing. Said documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. ECOH does not believe it is obligated to produce such documents again.

**13.** Documents relating to how reimbursement rate changes for Relevant Services impact the healthcare costs, rates or premiums of employers, including self insured employers.

**Response 13.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such decision process, whether past, present or future that may or may not have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations. Further responding, ECOH has provided data regarding reimbursement rates to the FTC. Said documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. Further responding, ECOH does not believe it is obligated to produce such documents again, as they are already equally available to Defendant, subject to the protective agreement entered into by ECOH and the FTC

**14.** Documents relating to any studies, discussions, or analyses of the marketability, commercial appeal, viability of, or your ability to offer, a provider network in the Relevant Area for the Relevant Services that only includes one hospital system located in the Relevant Area, including but not limited to analyses of desired hospital charge discounts for single-hospital networks, projected employer premium rates, and the relative strengths of the different Rockford Hospitals as the provider in a single-hospital-network.

**Response 14.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such decision process, whether past, present or future that may or may not have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations. Further responding, ECOH has provided data to the FTC. Said documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. Further responding, ECOH does not believe it is obligated to produce such documents again, as they are already equally available to Defendant, subject to the protective agreement entered into by ECOH and the FTC

**15.** Documents, including any studies or analyses, relating to competition between health plans in the Relevant Area for employers or health plan members from January 1, 2001 to the present, including but not limited to documents assessing the impact of offering a single-hospital network, documents relating to refusals by potential customers to switch to your network, and documents relating to efforts to expand your health plans' provider network during this time period.

**Response 15.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such analyses, whether past, present or future that have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations. Further responding, ECOH has provided data regarding reimbursement rates to the FTC. ECOH does not believe it is obligated to produce such documents again, as they are already equally available to Defendant, subject to the protective agreement entered into by ECOH and the FTC.

**16.** Documents sufficient to show that having a second hospital in your provider network in the Relevant Area has improved your ability to negotiate desired contract terms with Rockford Health System.

**Response 16.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such evaluations, whether past, present or future that may or may not have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would

negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations. Further responding, ECOH has provided data regarding reimbursement rates and multiple hospital providers to the FTC. Said documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. ECOH does not believe it is obligated to produce such documents again, as they are already equally available to Defendant, subject to the protective agreement entered into by ECOH and the FTC.

17. Documents sufficient to identify who negotiates or is involved in the negotiation of provider contracts with hospitals and primary care physicians for your health plans offered in the Relevant Area from January 1, 2005 to the present.

**Response 17.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, William Pocklington, Director of Provider Services, has been responsible for negotiating provider contracts since November 2009. Further responding, ECOH has provided data in this regard the FTC. Said documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. ECOH does not believe it is obligated to produce such documents again, as they are already equally available to Defendant, subject to the protective agreement entered into by ECOH and the FTC.

18. Documents relating to your negotiations with providers of the Relevant Services in the Relevant Area from January 1, 2005 to the present, including but not limited to documents relating to contract proposals, drafts, and communications between you and providers of Relevant Services in the Relevant Area; documents identifying key or "must-have" hospitals, outpatient facilities, or primary care physicians in the Relevant Area; documents analyzing the geographic coverage of providers; documents, information, and data relied upon during contract negotiations (such as quality measures, member utilization patterns, and employer or member feedback regarding your provider network or product offerings); documents relied upon to determine whether proposed reimbursement rates are comparable to those you pay to other providers of Relevant Services in the Relevant Area; documents reflecting whether to include or exclude any hospital or hospital system, or physician or physician organization in your provider network, communications regarding any provider's desire to exclude any other providers from a health plan; and copies of the final provider contracts, including any amendments or modifications, for Relevant Services in the Relevant Area.

**Response 18.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such negotiation and feedback regarding the same, whether past, present or future, represents internal plans, trade secrets, and

proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market. By way of further response, ECOH notes that it has already produced data to the Federal Trade Commission that includes negotiations of contracts. Said documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. ECOH does not believe it is obligated to produce such documents again, as they are already equally available to Defendant, subject to the protective agreement entered into by ECOH and the FTC.

**19.** Documents relating to pricing models that compare to the rates of the Relevant Hospitals for Relevant Services and outpatient services to any hospital or provider in the Relevant Area or in Illinois, including documents that you use to determine how actual or proposed contracts with the Relevant Hospitals compare to each other and how those contracts compare to contracts they have with other insurance carriers.

**Response 19.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such pricing data, whether past, present or future, represents internal plans, trade secrets, and proprietary information that, if disclosed, would negatively impact ECOH's ability to compete in the current market. By way of further response, ECOH notes that it has already produced data to the Federal Trade Commission that includes negotiations of contracts. Said documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. ECOH does not believe it is obligated to produce such documents again, as they are already equally available to Defendant, subject to the protective agreement entered into by ECOH and the FTC.

**20.** Documents relating to the cost-to-charge ratio for Relevant Services for any hospital in Illinois, including Relevant Hospitals.

**Response 20.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. . Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, ECOH notes that the present request from Defendant defines "Relevant Area" to include Winnebago, Ogle, and Boone Counties of Illinois, none of which are included in the above referenced facilities. Therefore, to the extent that this request seeks information regarding providers outside of that specified area, it is wholly irrelevant, and responding to the same would represent a substantial and economic burden on ECOH to obtain and produce said documents. Further objecting, any such cost-to-charge data, whether past, present or future, represents internal plans, trade secrets, and proprietary information that, if disclosed, would negatively impact ECOH's ability to compete in the current market. Further objecting, Defendants are hospital's within the

Relevant Area, and would have equal or better access to such information through less intrusive means. Therefore responding to the same would represent a substantial and economic burden on ECOH. The burden to provide such information should necessarily fall on the Defendant hospitals, and not Third party respondents in discovery.

21. Documents relating to financially incentivizing your health plan members to seek Relevant Services at lower cost providers within the State of Illinois, including any plans or programs encouraging health plan members' physicians to use lower cost hospitals, and any other programs that you use to incentivize consumers or members to seek Relevant Services at lower cost providers.

**Response 21.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. . Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, ECOH notes that the present request from Defendant defines "Relevant Area" to include Winnebago, Ogle, and Boone Counties of Illinois, none of which include the above referenced facilities. Therefore, to the extent that this request seeks information regarding providers outside of that specified area, it is wholly irrelevant, and responding to the same would represent a substantial and economic burden on ECOH to obtain and produce said documents. Further objecting, any such internal determination, whether past, present or future that may or may not have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations.

22. Documents relating to the Relevant transaction, including any studies, discussions, or analyses of the Relevant Transaction's impact on your health plan business, on your health plan rates for the Relevant Services, or on your continuation of business operations in the Relevant Area.

**Response 22.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. . Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such internal determination, whether past, present or future that may or may not have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations.

23. Documents relating to any studies, discussions, or analyses of the Relevant Transaction's impact on your members in the Relevant Area, including but not limited to the Relevant Transaction's impact on premiums, administrative service fees, or health care costs.

**Response 23.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. . Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such internal determination, whether past, present or future that may or may not have been under consideration by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations.

**24.** Documents relating to any rules or procedures you apply to providers in the Relevant Area to determine whether a patient receiving Relevant Services may be classified as an inpatient or outpatient for reimbursement purposes.

**Response 24.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. . Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, any such rules and procedures for making such a determination by respondent, represents internal plans, trade secrets, and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market, and threaten its ability to continue operations.

**25.** Submit, for each year from January 1, 2007 to the present, for any inpatient admission for any patient residing in the State of Illinois:

- a. the identity of the hospital, healthcare facility, or physician practice at which the patient was treated, including the owner of the hospital, healthcare facility, or physician practice, the address of the hospital, healthcare facility, or physician practice, including 5-digit ZIP code, and any hospital, healthcare facility, or physician practice identification number used for reimbursement purposes;
- b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, you shall mask personal identifying information, such as the patient's name or Social Security number, by substituting a unique patient identifier); if you are providing data in multiple records for the inpatient admission, a unique identifier for the admission or visit shall also be included in each record associated with the admission or visit;
- c. the patient's residence 5-digit ZIP code;
- d. the patient's age (in years), gender, and race;
- e. whether the treatment episode was inpatient; if inpatient, the date of admission and date of discharge;

- f. the primary associated DRG, MDC, and primary and secondary and ICD9 diagnosis and procedure codes;
- g. whether the treatment provided was for an emergency;
- h. the source of the patient referral (such as by referral from another hospital, or by a physician who does not admit the patient);
- i. the specific name of the entity and type of health plan (such as HMO, POS, PPO, etc.) that was the principal source of payment and including identifiers for the customer group (e.g., small group, large group), customer name, and whether the customer group was self-insured;
- j. for each produce listed in Request 25(i), identify whether this product is offered through a managed care contract with Medicare, Medicaid, or other public health insurance program;
- k. whether the hospital, healthcare facility, or physician practice identified in response to Request 25(a) was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital, healthcare facility, or physician practice was in;
- l. whether there was a capitation arrangement with a health plan covering the patient and, if so, identify the arrangement;
- m. the billed charges of the hospital, healthcare facility, or physician practice, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan includes any adjustments under any stop-loss provisions, and any additional amounts paid by the patient;
- n. any breakdown of the hospital's, healthcare facility's, or physician practice's charges by any category of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU) for which you provide reimbursement to the hospital, healthcare facility, or physician practice at different per diem or other rates;
- o. the identity of the patient's admitting physician and, if different, the identity of the treating physician;
- p. the amount of any payment by you to any physicians, separately from any reimbursement to the hospital, healthcare facility, or physician practice for any physician services associated with admission or treatment, or for any services associated with covered treatments or diagnoses identified in Request 25(m); and
- q. the patient's status (e.g., normal discharge, deceased, transferred to another hospital, etc.) upon discharge.

**Response 25.** ECOH objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, any document not received by the FTC from ECOH, or not used by the FTC to make its decision, is irrelevant. Further objecting, inpatient admission data, represents trade secrets and proprietary information that, if disclosed would negatively impact ECOH's ability to compete in the current market. By way of further response, ECOH notes that it



has already produced data to the Federal Trade Commission that includes some of the material requested. Said documents and are available to Defendant from the FTC, subject to the protective agreement entered into by ECOH and the FTC. ECOH does not believe it is obligated to produce such documents again, as they are already equally available to Defendant, subject to the protective agreement entered into by ECOH and the FTC. Further objecting, ECOH notes that the present request from Defendant defines "Relevant Area" to include Winnebago, Ogle, and Boone Counties of Illinois, none of which include the above referenced facilities. Therefore, to the extent that this request seeks information regarding providers outside of that specified area, it is wholly irrelevant, and responding to the same would represent a substantial and economic burden on ECOH to obtain and produce said documents. Further objecting, Defendants are hospital's within the Relevant Area, and would have equal or better access to such information through less intrusive means. Therefore responding to the same would represent a substantial and economic burden on ECOH. The burden to provide such information should necessarily fall on the Defendant hospitals, and not Third party respondents in discovery.

Respectfully Submitted,

MOMKUS MCCLUSKEY, LLC

By: 

One of the Attorneys for ECOH

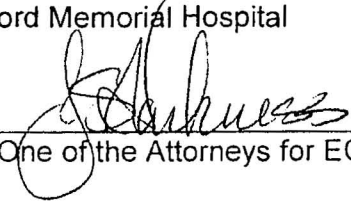
James F. McCluskey  
James S. Harkness  
MOMKUS MCCLUSKEY, LLC  
1001 Warrenville Road, Suite 500  
Lisle, IL 60532  
PH: 630-434-0400; Fax: 630-434-0444  
Attorneys for Third Party Respondent in Discovery,  
EMPLOYERS COALITION ON HEALTH

**PROOF OF SERVICE**

Under penalties of perjury as provided by law pursuant to Federal Rules of Civil Procedure, the undersigned certifies that a true and correct copy of the foregoing was filed via Federal Express, to the following; *ON DECEMBER 27, 2011.*

Rachael V. Lewis  
McDermott Will & Emery  
600 Thirteenth Street N.W.  
Washington, D.C. 2005  
Counsel for Rockford Memorial Hospital

By:

  
One of the Attorneys for ECOH

James F. McCluskey  
James S. Harkness  
MOMKUS MCCLUSKEY, LLC  
1001 Warrenville Road, Suite 500  
Lisle, IL 60532  
PH: 630-434-0400; Fax: 630-434-0444  
Attorneys for Third Party Respondent in Discovery,  
EMPLOYERS COALITION ON HEALTH

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

---

In the Matter of )

OSF Healthcare System, )  
a corporation, and )

Rockford Health System, )  
a corporation. )

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Docket No. 9349  
**PUBLIC**

**EXHIBIT C**

# McDermott Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Milan  
Munich New York Orange County Paris Rome Silicon Valley Washington, D.C.  
Strategic alliance with MWE China Law Offices (Shanghai)

Rachael V. Lewis  
Associate  
rlewis@mwe.com  
202-756-8709

January 17, 2012

## VIA E-MAIL

Troy A. Brinson, Esq.  
Momkus McCluskey, LLC  
1001 Warrenville Road, Suite 500  
Lisle, IL 60532

Re: Federal Trade Commission v. OSF Healthcare System and Rockford Health System,  
3:11-cv-50344 (N.D. IL)

Dear Troy:

During our January 6, 2012 call, I agreed that I would first review Employers' Coalition on Health's ("ECOH") production of documents to the Federal Trade Commission ("FTC") in response to the FTC's Civil Investigative Demand ("CID") before continuing the meet and confer process related to Rockford Health System's ("RHS") document requests served on ECOH. ECOH did not produce any documents responsive to Request Nos. 4-5, 7-17, 19-23 from our review of ECOH's production to the FTC. Please produce documents responsive to RHS' document requests by January 20th, or if ECOH is unable to produce certain documents by that date, please let us know what date ECOH intends to produce particular documents. If ECOH does not have responsive documents or does not intend to produce responsive documents, please confirm in response to each individual Request below.

### **Request No. 1 (Communications with FTC and Illinois AG regarding Relevant Transaction)**

ECOH indicated in its Objections to Request No. 1 that it produced responsive documents to the FTC in response to the FTC's CID.

### **Request No. 2 (Overall and Relevant Area Financial Performance)**

I understand that ECOH produced financial information for 2008, 2009, and 2010 to the FTC in response to the FTC's CID. Please produce financial information for 2011 by January 20, 2012. See Pocklington Deposition Transcript ("Pocklington Dep. Tr.") 109:21-110:22.

U.S. practice conducted through McDermott Will & Emery LLP.

600 Thirteenth Street, N.W. Washington D.C. 20005-3096 Telephone: +1 202 756 8000 Facsimile: +1 202 756 8087 www.mwe.com

**Request No. 3 (Provider Directories)**

I understand that ECOH produced documents responsive to No. 3 to the FTC in response to the FTC's CID.

**Request No. 4 (In-Network Providers in Identified Illinois and Iowa Areas)**

Please produce documents responsive to Request No. 4 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 5 (Large Employers in Relevant Area)**

Please produce documents responsive to Request No. 5 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 6 (Covered Lives or Members in Each Health Plan in Relevant Area)**

I understand that ECOH produced documents responsive to No. 6 to the FTC in response to the FTC's CID.

**Request No. 7 (Member Surveys, Studies, or Analysis)**

Please produce documents responsive to Request No. 7 or confirm that ECOH does not have responsive documents by January 20, 2012. *See* Pocklington Dep. Tr. 75:16-76:8.

**Request No. 8 (New Health Plan Products in Relevant Area)**

Please produce documents responsive to Request No. 8 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 9 and 10 (Choosing Physicians and Hospitals for Networks in Relevant Area)**

Please produce documents responsive to Request Nos. 9 and 10 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 11 (Evaluation of Health Plans in Relevant Area)**

Please produce documents responsive to Request No. 11 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 12 (Internal Communications Regarding Health Plans in Relevant Area)**

Please produce documents responsive to Request No. 12 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 13 (Impact of Reimbursement Rates)**

Please produce documents responsive to Request No. 13 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 14 (Potential of One Hospital Provider Network in Relevant Area)**

Please produce documents responsive to Request No. 14 or confirm that ECOH does not have responsive documents by January 20, 2012. *See* Pocklington Dep. Tr. 89:6-10.

**Request No. 15 (Competition Between Health Plans in Relevant Area)**

Please produce documents responsive to Request No. 15 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 16 (Impact of Second Hospital in Provider Network in Relevant Area)**

Please produce documents responsive to Request No. 16 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 17 (Individuals Responsible for Negotiating Provider Contracts)**

Please produce documents responsive to Request No. 17 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 18 (Negotiations with Providers)**

I understand that ECOH produced some documents responsive to No. 18 to the FTC in response to the FTC's CID. Please produce ECOH's provider contract(s) with SwedishAmerican as well as any amendments or modifications. *See* Pocklington Dep. Tr. 49:17-8, 50:13-15, 140:15-141:9.

**Request No. 19 (Pricing Models)**

Please produce documents responsive to Request No. 19 or confirm that ECOH does not have responsive documents by January 20, 2012. *See* Pocklington Dep. Tr. 105:3-14.

**Request No. 20 (Cost-to-Charge for Relevant Services for Hospitals in Illinois)**

Please produce documents responsive to Request No. 20 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 21 (Financial Incentives to Seek Lower Cost Providers)**

Please produce documents responsive to Request No. 21 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 22 (Impact of the Relevant Transaction on ECOH's Business)**

Please produce documents responsive to Request No. 22 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 23 (Impact of the Relevant Transaction on Members)**

Please produce documents responsive to Request No. 23 or confirm that ECOH does not have responsive documents by January 20, 2012.

**Request No. 24 (Rules for Determining Inpatient and Outpatient Status)**

I understand that ECOH produced documents responsive to Request No. 24 to the FTC in response to the FTC's CID.

**Request No. 25 (Claims Data)**

I understand that ECOH produced some data responsive to No. 25 to the FTC in response to the FTC's CID including data related to OSF Saint Anthony Medical Center. Please produce data responsive to Request No. 25 for Rockford Memorial Hospital and SwedishAmerican Hospital. If ECOH did in fact produce this data, please identify the Bates number in ECOH's production to the FTC. Please produce data responsive to this Request or confirm that ECOH does not have responsive data by January 20, 2012.

Sincerely,



Rachael V. Lewis

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

_____	)	
In the Matter of	)	
	)	
OSF Healthcare System,	)	Docket No. 9349
a corporation, and	)	<b>PUBLIC</b>
	)	
Rockford Health System,	)	
a corporation.	)	
_____	)	

**EXHIBIT D**



**Lewis, Rachael**

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**From:** Lewis, Rachael  
**Sent:** Friday, January 20, 2012 4:41 PM  
**To:** Troy A. Brinson  
**Subject:** RE: Federal Trade Commission v. OSF Healthcare System, et al.  
**Attachments:** Pocklington (Confidential - Attorneys' Eyes Only), William.pdf

Troy,

The transcript is attached. After Monday's deposition, our understanding is that ECOH does not create as many types of documents as perhaps other health insurance companies. For requests in which ECOH does not have responsive documents, we would like you to confirm that is the case.

Is there a time on Monday you can discuss?

Regards,  
Rachael

Rachael V. Lewis  
McDermott Will & Emery LLP  
600 13th Street NW  
Washington DC 20005  
202-756-8709 | [rlewis@mwe.com](mailto:rlewis@mwe.com)

---

**From:** Troy A. Brinson [<mailto:tbrinson@momlaw.com>]  
**Sent:** Friday, January 20, 2012 4:15 PM  
**To:** Lewis, Rachael  
**Subject:** RE: Federal Trade Commission v. OSF Healthcare System, et al.

Rachael,

Please allow this to serve as a preliminary response to your correspondence of January 17, 2012.

By way of follow up to the voice message I just left you. I have been unable to confer with my client in order to respond to the same by today's date. I do note, however, that you make several specific references to Mr. Pocklington's deposition transcript. This places us in a disadvantage, as we do not presently have a copy of the same. Please be so kind as to forward a copy of the transcript to my attention so that we may properly respond to your request.

Regards,

Troy



*Troy A. Brinson, Esq.*  
**Momkus McCluskey, LLC**

1001 Warrenville Road, Suite 500  
Lisle, IL 60532  
Ph: (630) 434-0400 x 111  
Direct Dial: (630) 493-0527  
Fax: (630) 434-0444  
[tbrinson@momlaw.com](mailto:tbrinson@momlaw.com)  
[www.momlaw.com](http://www.momlaw.com)

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---

**From:** Lewis, Rachael [<mailto:RLewis@mwe.com>]  
**Sent:** Tuesday, January 17, 2012 8:25 PM  
**To:** Troy A. Brinson  
**Subject:** Federal Trade Commission v. OSF Healthcare System, et al.

Counsel,

Please see attached correspondence in the above referenced matter.

Regards,  
Rachael

Rachael V. Lewis  
McDermott Will & Emery LLP  
600 13th Street NW  
Washington DC 20005  
202-756-8709 | [rlewis@mwe.com](mailto:rlewis@mwe.com)

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

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In the Matter of	)	
	)	
OSF Healthcare System,	)	Docket No. 9349
a corporation, and	)	<b>PUBLIC</b>
	)	
Rockford Health System,	)	
a corporation.	)	

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**EXHIBIT E**

**Lewis, Rachael**

---

**From:** Lewis, Rachael  
**Sent:** Thursday, January 26, 2012 12:43 PM  
**To:** Troy A. Brinson  
**Subject:** RE: RHS/OSF Matter

Troy,

Since I did not hear from you at 10:00CST/11:00EST as noted below -- we need to reschedule the call today. Please let me know when you are available to discuss the document requests?

Regards,  
Rachael

Rachael V. Lewis  
McDermott Will & Emery LLP  
600 13th Street NW  
Washington DC 20005  
202-756-8709 | [rlewis@mwe.com](mailto:rlewis@mwe.com)

---

**From:** Troy A. Brinson [<mailto:tbrinson@momlaw.com>]  
**Sent:** Wednesday, January 25, 2012 4:52 PM  
**To:** Lewis, Rachael  
**Subject:** RE: RHS/OSF Matter

Rachael,

I intending to call at 4:00 CST/5:00 EST. However, I'll have to push our call to 10:00 a.m. tomorrow. My client's office is unexpectedly closed today, and I've not been able to speak with them in this regard.

However, I can confirm that we cannot accept service on behalf of Kelly Davit.

Additionally, It is my understanding that none of the parties have designated Mr. Pocklington as a witness at the TRO. Can you confirm?

Finally, the parties are supposed to disclose any documents they intend to produce relative to ECOH. Can you confirm what documents from ECOH, if any, RHS and OSF indent to introduce at the TRO hearing?

Regards,

Troy

---

**From:** Lewis, Rachael [<mailto:RLewis@mwe.com>]  
**Sent:** Wednesday, January 25, 2012 3:17 PM  
**To:** Troy A. Brinson  
**Subject:** RHS/OSF Matter

Troy,

Were you going to call at 4:00 EST or 5:00 EST to discuss the discover requests and whether ECOH will accept service for Ms. Davit?

Thanks,  
Rachael

Rachael V. Lewis  
McDermott Will & Emery LLP  
600 13th Street NW  
Washington DC 20005  
202-756-8709 | [rlewis@mwe.com](mailto:rlewis@mwe.com)

\*\*\*\*\*  
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\*\*\*\*\*

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**Lewis, Rachael**

---

**From:** Lewis, Rachael  
**Sent:** Friday, January 27, 2012 2:35 PM  
**To:** Troy A. Brinson  
**Subject:** FW: Voice Message from Unknown (630-434-0400)

Troy- I will call you at 5:00EST/4:00CST as your message requests.

Rachael V. Lewis  
McDermott Will & Emery LLP  
600 13th Street NW  
Washington DC 20005  
202-756-8709 | [rlewis@mwe.com](mailto:rlewis@mwe.com)

---

**From:** Unity Messaging System - HQUM01  
**Sent:** Friday, January 27, 2012 1:10 PM  
**To:** Lewis, Rachael  
**Subject:** Voice Message from Unknown (630-434-0400)

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

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In the Matter of )

OSF Healthcare System, )  
a corporation, and )

Rockford Health System, )  
a corporation. )

---

Docket No. 9349  
**PUBLIC**

**EXHIBIT F**

**Lewis, Rachael**

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**From:** Lewis, Rachael  
**Sent:** Friday, February 03, 2012 12:39 PM  
**To:** 'Troy A. Brinson'  
**Subject:** RE: FTC v. OSF and RHS; CONFIDENTIAL AND NOT FOR DISTRIBUTION

Troy,

Thank you for promptly providing the layout index which will hopefully help us interpret the payor claims data.

I believe that we have met and conferred regarding the document requests that were served on ECOH in December. As I understand, ECOH's position is that it will not produce documents in response to the document requests because of the sensitivity of the information requested. I ask that you return my call today to confirm my understanding of ECOH's position before we move to compel.

Regards,  
Rachael

Rachael V. Lewis  
McDermott Will & Emery LLP  
600 13th Street NW  
Washington DC 20005  
202-756-8709 | [rlewis@mwe.com](mailto:rlewis@mwe.com)

**From:** Troy A. Brinson [<mailto:tbrinson@momlaw.com>]  
**Sent:** Friday, February 03, 2012 11:54 AM  
**To:** Lewis, Rachael  
**Subject:** FTC v. OSF and RHS; CONFIDENTIAL AND NOT FOR DISTRIBUTION

Rachael,

I am out of the office all day today on another matter. However, I have spoken with my client regarding your request.

It is difficult to know what the transmission that the FTC provided you looked like. If you could forward a snapshot of the same, my client would be in a better position to assist you.

In the meantime, attached find a layout index that may address your concerns. It may be helpful.

On another note, we would prefer presenting Bill Pocklington on February 16, and Paul Brand on February 17, each deposition to proceed at our Lisle office.

Regards,

Troy

*Connected by DROID on Verizon Wireless*



**Lewis, Rachael**

---

**From:** Lewis, Rachael  
**Sent:** Monday, January 30, 2012 2:09 PM  
**To:** Troy A. Brinson  
**Cc:** Powers, Daniel  
**Subject:** FW: ECOH - Protective Order for Part III Administrative Proceeding [IWOV-DM\_US.FID487495]  
**Attachments:** Part 3 Protective Order.pdf; 12-21-11 ECOH Part III Subpoena to Produce documents.pdf

Troy,

By close of business today, we need to know the dates for Mr. Pocklington's and Mr. Brand's depositions.

We also need to know today whether the protective order in the Part III proceedings alleviates ECOH's concerns regarding confidentiality, and accordingly, ECOH will agree to produce documents in response to the requests that we discussed on Friday. If we do not hear from you by the end of today on this issue, we will assume that ECOH's position is that it will not produce documents responsive to the document requests.

Regards,  
Rachael

Rachael V. Lewis  
McDermott Will & Emery LLP  
600 13th Street NW  
Washington DC 20005  
202-756-8709 | [rlewis@mwe.com](mailto:rlewis@mwe.com)

---

**From:** Lewis, Rachael  
**Sent:** Sunday, January 29, 2012 10:38 AM  
**To:** 'Troy A. Brinson'  
**Cc:** Powers, Daniel  
**Subject:** FW: ECOH - Protective Order for Part III Administrative Proceeding [IWOV-DM\_US.FID487495]

Troy,

Please let us know Monday (January 30) the dates that Mr. Pocklington and Mr. Brand are available for the FTC Part III depositions.

Regards,  
Rachael

Rachael V. Lewis  
McDermott Will & Emery LLP  
600 13th Street NW  
Washington DC 20005  
202-756-8709 | [rlewis@mwe.com](mailto:rlewis@mwe.com)

---

**From:** Powers, Daniel  
**Sent:** Friday, January 27, 2012 6:04 PM  
**To:** [tbrinson@momlaw.com](mailto:tbrinson@momlaw.com)

**Cc:** Lewis, Rachael

**Subject:** ECOH - Protective Order for Part III Administrative Proceeding [IWOV-DM\_US.FID487495]

Troy,

Thanks for taking the time to discuss the document requests this afternoon. Attached is the Protective Order issued in the Part III proceeding. I've also attached a copy of the subpoena that was issued relating to the Part III proceeding for your convenience.

Thanks,

Dan

---

Daniel G. Powers

**McDermott Will & Emery LLP**

600 13th Street, NW Washington, DC 20005

T: 202-756-8131 | F: 202-756-8087

E: [dgpowers@mwe.com](mailto:dgpowers@mwe.com)

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

---

In the Matter of )

OSF Healthcare System, )  
a corporation, and )

Rockford Health System, )  
a corporation. )

---

Docket No. 9349  
**PUBLIC**

**EXHIBIT G**



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Paul Brand The Employers' Coalition on Health 1639 N. Alpine Road, 5th Floor Rockford, IL 61107</p>	<p>2. FROM</p> <p style="text-align: center; font-weight: bold;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	--

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>McDermott Will &amp; Emery LLP 227 West Monroe Street Chicago, IL 60606</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p style="text-align: center;">Court reporter to be determined</p>
<p>5. DATE AND TIME OF DEPOSITION</p> <p style="text-align: center;">February 13, 2012, 9:00 a.m.</p>	

6. SUBJECT OF PROCEEDING

In the Matter of OSF Healthcare System and Rockford Health System, Docket No. 9349

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell Chief Administrative Law Judge</p> <p style="text-align: center; margin-top: 20px;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Rachael V. Lewis McDermott Will &amp; Emery LLP 600 13th Street, N.W. Washington, D.C. 20005-3096 (202) 756-8709</p>
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<p>DATE SIGNED</p> <p style="font-size: 1.5em; font-family: cursive;">1/23/2012</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> <p style="font-size: 1.5em; font-family: cursive; text-align: center;">R. Lewis</p>
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### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)*

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

*on the person named herein on:*

(Month, day, and year)

(Name of person making service)

(Official title)



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>William Pocklington The Employers' Coalition on Health 1639 N. Alpine Road, 5th Floor Rockford, IL 61107</p>	<p>2. FROM</p> <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>McDermott Will &amp; Emery LLP 227 West Monroe Street Chicago, IL 60606</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p style="text-align: center;">Court reporter to be determined</p>
	<p>5. DATE AND TIME OF DEPOSITION</p> <p style="text-align: center;">February 15, 2012, 9:00 a.m.</p>

6. SUBJECT OF PROCEEDING

In the Matter of OSF Healthcare System and Rockford Health System, Docket No. 9349

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell Chief Administrative Law Judge</p> <p style="text-align: center;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Rachael V. Lewis McDermott Will &amp; Emery LLP 600 13th Street, N.W. Washington, D.C. 20005-3096 (202) 756-8709</p>
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<p>DATE SIGNED</p> <p style="font-size: 1.2em; font-family: cursive;">1/23/2012</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> <p style="font-size: 1.5em; font-family: cursive;">R. Lewis</p>
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(Month, day, and year)

(Name of person making service)

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