



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

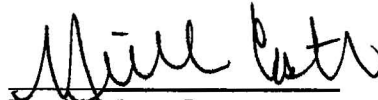
**RESPONDENT ROCKFORD HEALTH SYSTEM’S MOTION TO COMPEL
UNITEDHEALTH GROUP TO PRODUCE DOCUMENTS REQUESTED BY
SUBPOENA DUCES TECUM AND TO ENFORCE SUBPOENA AD TESTIFICANDUM**

Respondent Rockford Health System (“Respondent” or “RHS”) respectfully submit this Motion to Compel UnitedHealth Group (“United”) to Produce Documents Requested by Subpoena *Duces Tecum* and to Enforce Subpoena *Ad Testificandum*, 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 have attempted to confer in good faith with counsel for United in an effort to obtain the requested documents and schedule a deposition without the Court’s intervention. Respondent and United have been unable to reach an agreement, therefore Respondent respectfully moves the Court for an Order requiring the immediate production of documents and scheduling of a deposition for the reasons set forth in Respondent’s accompanying Memorandum in support of this motion.

Dated: February 6, 2012

Respectfully submitted,



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*Attorneys for Respondent Rockford Health
System*

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PROPOSED ORDER

Upon consideration of Respondent Rockford Health System's Motion to Compel UnitedHealth Group to Produce Documents Requested by Subpoena *Duces Tecum* and to Enforce Subpoena *Ad Testificandum*, and any opposition thereto,

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

IT IS FURTHER ORDERED that UnitedHealth Group 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.

IT IS FURTHER ORDERED that UnitedHealth Group shall immediately take all necessary steps toward scheduling the requested deposition of United's representative. The deposition shall be scheduled to take place by or before February 17, 2012.

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 UnitedHealth Group to Produce Documents Requested by Subpoena *Duces Tecum* and to Enforce Subpoena *Ad Testificandum* 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 UnitedHealth Group to Produce Documents Requested by Subpoena *Duces Tecum* and to Enforce Subpoena *Ad Testificandum* and Proposed Order upon the following individuals by electronic mail on February 6, 2012:

Athanasios Papadopoulos, Esq.
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Counsel for UnitedHealth Group

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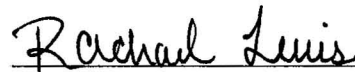
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Attorneys for Respondent OSF Healthcare System

Dated: February 6, 2012



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

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BEFORE THE FEDERAL TRADE COMMISSION**

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

On February 3, 2012, Respondent's Counsel, Rachael Lewis, conferred telephonically at approximately 1:00 p.m. EST with Mr. Athanasios Papadopoulos, Counsel for United, in an effort in good faith to resolve the outstanding issues raised by Respondent's Motion to Compel United to Produce Documents Requested by Subpoena *Duces Tecum* and to Enforce Subpoena *Ad Testificandum*. Counsel were unable to reach an agreement on the outstanding items.

Respondent's Counsel and Counsel for United discussed these issues in correspondence on January 17, 2012, January 19, 2012, January 20, 2012, and January 31, 2012. Additionally, Respondent's Counsel met with Counsel for United by conference call on January 6, 2012, February 1, 2012, and February 3, 2012. During these telephone calls, Rachael Lewis was present on Respondent's behalf and James K. Gardner or Athanasios Papadopoulos were present on United's behalf. During the telephone call on February 3, 2012, Counsel for United stated that United would not produce documents responsive to several of Respondent's outstanding subpoena requests. As a result of these communications it was concluded that Respondent and United were at an impasse regarding the issues raised in the foregoing Motion.

Dated: February 6, 2012

Respectfully submitted,

By: Rachael Lewis

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United 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” but agreed to produce certain responsive documents to the extent that they exist and were not previously produced to the FTC. (See Exhibit B, Dec. 23, 2011 Letter from J. Gardner). On January 6, 2012, Counsel for Respondent attempted in good faith to negotiate a resolution of these concerns with Counsel for United. Counsel for United represented that United (1) would produce documents responsive to Subpoena Request Nos. 1-5, 9-11, and 21, (2) does not possess documents responsive to Subpoena Request Nos. 6, 12, 16, and 24, (3) would search for documents responsive to Subpoena Request Nos. 8, 14 and 22, (4) previously produced documents to the FTC responsive to Subpoena Request Nos. 17 and 25¹, and (5) maintains its objections and refuses to respond to Subpoena Request Nos. 7, 13, 15, 18-20, and 23. (See Exhibit C, Jan. 17, 2012 Letter from R. Lewis). On January 19-20, 2012, United produced documents responsive to Subpoena Request Nos. 2-4, 6, 9-11, 14-15, 19 and 21, but United did not produce all documents responsive to each Request. (See Exhibit D, Jan. 19-20, 2012 Letters from A. Papadopoulos). On January 31, 2012 and February 1, 2012, Respondent’s Counsel inquired with United’s Counsel via e-mail and via telephone as to whether United would produce documents that remained outstanding from Subpoena Request Nos. 7, 12, 15, 18, and 19. (See Exhibit E, Jan. 31 – Feb 1, 2012 Emails from R. Lewis). On February 3, 2011, United’s Counsel represented that United would produce documents responsive to Subpoena

¹ Counsel for United represented that United previously produced claims data to the FTC in response to the FTC’s Civil Investigative Demand. United stated that this data is also responsive to Respondent’s Subpoena Request No. 25. In fact, the data United 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 and does not completely cover the entire state of Illinois), but Respondent is not moving to compel production of additional data under this Request.

Request Nos. 1, 5-6, and 20, but United maintains its objection to Subpoena Request Nos. 7, 12, 15, and 18-19.

The five Subpoena Requests at issue are as follows: 1) Subpoena Request No. 7, which seeks member surveys, studies, or analyses; 2) Subpoena Request No. 12, which seeks communications between physician network personnel and sales personnel regarding health plan management; 3) Subpoena Request No. 15, which seeks documents relating to competition between health plans; 4) Subpoena Request No. 18, which seeks documents relating to United's negotiations with providers of general acute care inpatient hospital services in the Rockford area, 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. (*See Exhibit A*). By this motion, Respondent does not challenge United's representation that it lacks documents responsive to Subpoena Request Nos. 6, 12, 16, and 24. The focus of this motion is on United's failure to produce documents responsive to the five outstanding Requests: Nos. 7, 12, 15, 18 and 19. It is urgently important that Respondent receives prompt production of these requested documents.

On January 23, 2012, served a subpoena *ad testificandum* for the deposition of United's Regional Vice President for Network Management, Ms. Michelle Lobe. (*See Exhibit F*). The Subpoena is one of several subpoenas *ad testificandum* issued by the Commission on Respondent's behalf, pursuant to Rule 3.34(b) of the Commission's Rules of Adjudicative Practice. Respondent attempted to schedule Ms. Lobe's deposition for February 9, 2012. While United has failed to file a motion to quash or otherwise formally object to the subpoena *ad testificandum*, Counsel for United has represented to Respondent's Counsel that Ms. Lobe will not appear for a deposition. RHS seek an Order compelling United to produce Ms. Lobe for a

deposition, as the information sought from Ms. Lobe is reasonably relevant to the instant proceeding and is necessary for the purposes of discovery. *Gen. Foods.*, 1978 FTC LEXIS 412, at *2. Ms. Lobe testified on January 10, 2012 in response to a subpoena to testify in the Northern District of Illinois proceeding, *Federal Trade Commission v. OSF Healthcare System and Rockford Health System* (Case No. 11-cv-50344). Since Ms. Lobe's testimony, United has produced additional documents responsive to Respondent's subpoena requests on January 19, 2012, January 20, 2012, and February 3, 2012. Counsel for Respondent intend to depose Ms. Lobe on documents produced after the January 10, 2012 deposition.² United has made no showing that Ms. Lobe's appearance will be unreasonably burdensome.

Timely receipt of the documents and immediate scheduling of Ms. Lobe's deposition are necessary for RHS to have adequate opportunity to review the documents and conduct the deposition prior to the close of discovery. United's refusal to comply with the Subpoenas, coupled with the impending close of discovery on February 17, 2012, leaves RHS 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

² Ms. Lobe testified on September 27, 2011 as part of the FTC's investigation related to the proposed Affiliation between OSF Healthcare System and Rockford Health System. Counsel for Rockford Health System was not invited to participate in that proceeding.

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 Respondent’s ability and incentive to unilaterally demand higher reimbursement rates from commercial health plans” (Compl. ¶ 40), Respondent requires 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 Commissions allegation that the acquisition will adversely affect competition for inclusion in each health plan’s provider network (Compl ¶¶ 43-45), Respondent requires information concerning MCOs’ health plans, including member surveys and studies, communications between physician network personnel and sales personnel regarding health plan management, and documents relating to competition between health plans. (*See* Subpoena Request Nos. 7, 12, and 15 (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 United’s responsive documents as they are pertinent to Respondent’s defense in this matter. Without the requested documents, RHS will not have

ample opportunity to “develop those facts which are essential” to their defense. *In re Gen. Foods.*, 1978 FTC LEXIS 412, at *6 (April 18, 1978).

United’s assertion that the Subpoena imposes an undue burden lacks both factual and legal support, as United has presented no justifiable reason for its failure to comply with the Subpoena, nor has it attempted to mitigate any burden of production by negotiating further with Respondent to limit the scope of the outstanding Subpoena Requests. 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.”).

United's claim that the documents requested are "sensitive" is insufficient to overcome United'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 United's concern about the information's sensitive nature. Furthermore, the provisions of the Protective Order Governing Discovery Material Order in this proceeding protect United'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).

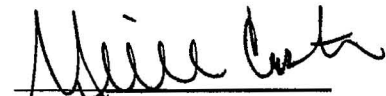
In light of RHS' efforts to resolve these disputes, and in consideration of the fast approaching discovery deadline, it is essential that Respondent immediately receives the requested materials and proceed with the noticed deposition prior to the close of discovery.

CONCLUSION

For all of the foregoing reasons, RHS respectfully requests that the Court grant its Motion and issue an Order requiring United's immediate production of documents and compliance with the subpoena *ad testificandum*.

Dated: February 6, 2012

Respectfully submitted,



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*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 UnitedHealth Group to Produce Documents Requested by Subpoena *Duces Tecum* and to Enforce Subpoena *Ad Testificandum* upon the following individuals by hand on February 6, 2012:

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Secretary
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600 Pennsylvania Avenue, NW, Room 172
Washington, DC 20580

The Honorable D. Michael Chappell
Administrative Law Judge
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Washington, D.C. 20580

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Athanasios Papadopoulos, Esq.
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Attorneys for Respondent OSF Healthcare System

Dated: February 6, 2012

Rachael Lewis

Rachael V. Lewis
Counsel for Respondent
Rockford Health System

DM_US 31674762-1.046498.0021

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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 UnitedHealth Group c/o Teonta Williams, Esq. 1300 River Drive, #200 Moline, IL 61625	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
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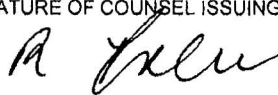
6. SUBJECT OF PROCEEDING

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 
-----------------------------------	--

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 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)

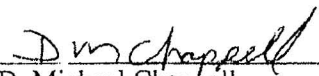
Rockford Health System)
a corporation,)
Respondents.)
_____)

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,)
a corporation, and)
)
Rockford Health System,)
a corporation.)

Docket No. 9349
PUBLIC

EXHIBIT B

December 23, 2011

VIA U.S. Mail and Electronic Mail

Rachael Lewis
McDermott Will & Emery
600 13th Street, N.W.
Washington, D.C.
20005-3096

**Re: Federal Trade Commission v. OSF Healthcare System and Rockford Health System, Case No. 3:11-cv-50344
Subpoena Served on UnitedHealth Group**

Dear Rachael:

Our client, UnitedHealth Group ("United"), has asked us to respond to the subpoena issued to it on behalf of Rockford Health System ("RHS"). Pursuant to Fed. R. Civ. P. 45(c)(2)(B), United hereby responds as follows:

GENERAL OBJECTIONS

United asserts these General Objections to each and every one of RHS's requests, definitions and instructions individually and as to the requests as a whole. These General Objections are incorporated by reference in the specific responses set forth below and are neither waived nor limited by the specific responses.

1. United objects to the requests to produce to the extent that they purport to seek information and/or documents protected from discovery under the attorney-client privilege, the work-product doctrine, the joint-defense or common-interest privilege, or any other privilege or protection available under the applicable law. Consistent with Fed. R. Civ. P. 26(b)(5), United will identify the documents and/or information for which it asserts a claim of privilege.
2. United objects to the requests to produce to the extent that they are overly broad, unduly burdensome, or seek information and/or documents that are not reasonably calculated to lead to the discovery of admissible evidence.
3. United objects to the requests to produce to the extent that they seek to impose obligations on United that exceed those imposed by the Federal Rules of Civil Procedure or the Local Rules of the United States District Court for the Northern District of Illinois.

Rachael Lewis
December 23, 2011
Page 2

4. United objects to the time period imposed by the requests to produce as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

5. United objects to the requests to produce and its definitions and instructions to the extent that they fail to describe the information sought with reasonable particularity, reference documents that do not exist, or are argumentative or unfairly worded and may, therefore, make responses misleading or incorrect.

6. United objects to the requests to produce to the extent that they seek information and/or documents not readily within the possession, custody or control of United.

7. United objects to the requests to produce to the extent that they seek the disclosure of information and/or documents that contain trade secrets or confidential research, development, proprietary or commercial information unless and until an appropriate protective order is entered by the Court.

8. An agreement to produce documents in response to a request is not an assertion that responsive documents exist.

9. United objects to the requests to produce to the extent that they are duplicative of other document requests. To the extent the requests to produce seek production of documents that are already in RHS's possession or have already been produced to RHS, the requests to produce are unduly burdensome and duplicative.

10. The responses set forth herein are based on information presently known to United. In providing these responses, United reserves the right to amend, modify, or supplement its responses and objections.

Document Requests

1. United will produce documents responsive to this request to the extent that they have not already been produced.

2. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, United will produce documents relating to its "overall financial performance in the Relevant Area" to the extent that such documents exist and can be retrieved from United's records.

3. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, United will produce its provider directories for the year 2011.

Rachael Lewis
December 23, 2011
Page 3

4. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, United will produce its provider directories for the year 2011.

5. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, United will produce documents indentifying its employer customers whose principal places of business are located in the Relevant Area.

6. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

7. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, United states that is not presently aware of any documents responsive to this request.

8. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

9. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, United will produce the most recent Access Report and credentialing information for the Relevant Area.

10. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, United will produce the most recent Access Report and credentialing information for the Relevant Area.

11. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, United will produce the most recent Access Report and credentialing information for the Relevant Area.

12. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

13. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. United further objects to this request on the basis that it is vague and ambiguous.

Rachael Lewis
December 23, 2011
Page 4

14. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. United further states that it is not presently aware of any "analyses of desired hospital charge discounts for single-hospital networks." Subject to and without waiving the foregoing objections, United will produce the most recent Geo-Access Report, which provides information relating to competitive networks in the Relevant Area.

15. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. United further objects to this request on the basis that it is vague and ambiguous.

16. No documents are responsive to this request.

17. Documents responsive to this request have been produced to the Federal Trade Commission pursuant to a civil investigative demand received by United on March 16, 2011.

18. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. United further objects to this request on the basis that it is vague and ambiguous. Subject to and without waiving the foregoing objections, United states that provider contracts responsive to this request have been produced to the Federal Trade Commission pursuant to a civil investigative demand received by United on March 16, 2011.

19. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. United further objects to this request on the basis that it is vague and ambiguous.

20. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. United further objects to this request on the basis that it is vague and ambiguous.

21. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, United will produce responsive marketing materials for 2010/2011 concerning the manner in which health plan members may save money by using in-network providers.

22. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. United further objects to this request on the basis that it is vague and ambiguous.

Rachael Lewis
December 23, 2011
Page 5

23. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. United further objects to this request on the basis that it is vague and ambiguous.

24. United objects to this request to the extent that it assumes or implies that it has "rules or procedures" that it applies 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." Subject to and without waiving the foregoing objection, United states that no documents are responsive to this request.

25. United objects to this request on the basis that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, United states that claim data responsive to this request has been produced to the Federal Trade Commission pursuant to a civil investigative demand received by United on March 16, 2011.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Gardner", with a long horizontal flourish extending to the right.

James K. Gardner

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

James K. Gardner
Neal Gerber Eisenberg LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602

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

Dear Jim:

This letter serves to memorialize the meet and confer with counsel representing UnitedHealth Group ("United") on January 6, 2012 regarding the discovery requests that were served on United in the above-captioned matter. The following summarizes our understanding of the issues and the parties' positions taken during the meet and confer and your letter dated December 23, 2011 ("December 23, 2011 letter"). I have made my best effort to memorialize our discussions, but please advise if this letter contains inaccuracies in your view. Please produce responsive documents by January 20th, or if United is unable to produce certain documents by that date, please let us know what date United intends to produce those particular documents.

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

Your December 23, 2011 letter stated that United will produce documents responsive to Request No. 1. Please produce documents responsive to this Request or confirm that United does not have responsive documents by January 20, 2012.

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

Your December 23, 2011 letter stated that United will produce documents relating to its "overall financial performance in the Relevant Area" to the extent those documents exist. Please produce documents responsive to this Request or confirm that United does not have responsive documents by January 20, 2012.

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)

Your December 23, 2011 letter stated that United will produce provider directories for the year 2011. Please produce documents responsive to this Request by January 20, 2012.

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

Your December 23, 2011 letter stated that United will produce provider directories for the year 2011. Please produce documents responsive to this Request by January 20, 2012.

Request No. 5 (Large Employers in Relevant Area)

Your December 23, 2011 letter stated that United will provide documents identifying its employer customers with a principal place of business in the Relevant Area. Please produce documents responsive to this Request by January 20, 2012.

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

After performing a reasonable search for documents responsive to Request No. 6, United stated that it does not have documents responsive to this Request during the meet and confer process.

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

Please provide presentations, internal communications, and other documents relating to customers' preferences in the Relevant Area. *See* Lobe Investigational Hearing Transcript ("IH Tr.") 20:13-21:6; Lobe Deposition Transcript ("Dep. Tr.") 50:11-51:2, 84:16-85:8, 109:22-110:3, 151:7-16. Please produce documents responsive to this Request or confirm that United does not have responsive documents by January 20, 2012.

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

United indicated that it was still in the process of searching for documents responsive to Request No. 8 during the meet and confer. Documents responsive to this Request would include the "Core" product. *See* Lobe IH Tr. 48:7-49:13; Lobe Dep. Tr. 60:23-61:8. Please produce documents responsive to this Request by January 20, 2012.

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

Your December 23, 2011 letter stated that United will provide "the most recent Access Report and credentialing information for the Relevant Area." Please produce documents responsive to these Requests by January 20, 2012.

Request No. 11 (Evaluation of Health Plans' Provider Networks in Relevant Area)

Your December 23, 2011 letter stated that United will provide "the most recent Access Report and credentialing information for the Relevant Area." Please produce documents responsive to this Request 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 United 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 United does not have responsive documents by January 20, 2012.

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

Your December 23, 2011 letter stated that United will provide "the most recent Geo-Access Report." United also indicated that it was still in the process of searching for documents responsive to Request No. 14 during the meet and confer. Please produce documents responsive to this Request by January 20, 2012.

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

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

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

After performing a reasonable search for documents responsive to Request No. 16, United stated that it does not have documents responsive to this Request.

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

United indicated that it produced documents responsive to Request No. 17 to the Federal Trade Commission ("FTC") in response to the FTC's Civil Investigative Demand ("CID")

Request No. 18 (Negotiations with Providers)

We believe that United may have documents responsive to Request No. 18 including:

- Communications, presentations, minutes, or documents regarding United's negotiations with SwedishAmerican for a new provider contract. *See* Lobe IH Tr. 63:7-11.
- Communications, presentations, minutes, or other documents related to United's discussions with OSF system and potential contract between United and OSF. *See* Lobe Dep. Tr. 78:6-11.
- Any minutes that were retained in the weekly meetings with the pricing team or any "negotiation strategy document[s]" for the hospitals in the Relevant Area. *See* Lobe Dep. Tr. 12:3-15.

Request No. 19 (Pricing Models)

We believe that United has documents responsive to Request No. 19. *See* Lobe IH Tr. 43:10-13; Lobe Dep. Tr. 71:14-73:4. United indicated that it was still in the process of searching for documents responsive to Request No. 19 during the meet and confer process. We understand that United can produce pricing models based on hospital, product, inpatient/outpatient yield, service line, and members (i.e., fully insured and self-insured members). *See* Lobe Dep. Tr. 75:9-76:18, 149:10-20. Please produce documents responsive to this Request by January 20, 2012.

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

We believe that United may have documents responsive to Request No. 20. *See* Lobe IH Tr. 62:15-21; Lobe Dep. Tr. 133:4-135:8, 176:16-23. Please produce documents responsive to this Request by January 20, 2012.

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

Your December 23, 2011 letter stated that United will provide "marketing materials for 2010/2011 concerning that matter in which health plan members may save money by using in-network providers." Please produce documents responsive to this Request by January 20, 2012.

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

United indicated that it was still in the process of searching for non-privileged documents responsive to Request No. 22 during the meet and confer process. Please produce documents responsive to this Request by January 20, 2012.

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

James K. Gardner
January 17, 2012
Page 5

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

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

After performing a reasonable search for documents responsive to Request No. 24, United stated that it does not have documents responsive to this Request.

Request No. 25 (Claims Data)

United indicated that it produced data responsive to Request No. 25 to the FTC in response to the FTC's CID.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachael V. Lewis". The signature is fluid and cursive, with the first name being the most prominent.

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)	PUBLIC
)	
Rockford Health System,)	
a corporation.)	
_____)	

EXHIBIT D

January 20, 2012

VIA FEDEX (SATURDAY DELIVERY) AND E-MAIL

Rachael Lewis
McDermott Will & Emery
600 13th Street, N.W.
Washington, D.C.
20005-3096

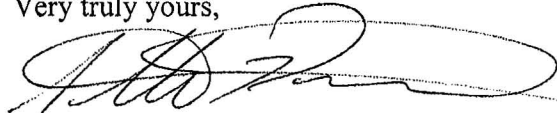
Re: Federal Trade Commission v. OSF Healthcare System, et al.
(Case No. 3:11-cv-50344)

Dear Rachael:

Please find enclosed a disc containing documents (FTC_OSF-United-01143 – FTC_OSF-United-01156) which are responsive to Request Nos. 6, 19 and 21 of the Subpoena as set forth in Jim Gardner's letter to you dated December 23, 2011. Please note that the documents contained on the disc have been designated as either "CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "CONFIDENTIAL" in accordance with the Amended Protective Order (dated January 6, 2012) entered by the Court in this matter.

As always, please contact me or Jim Gardner should you have any questions or if you would like to discuss this matter further. Thank you.

Very truly yours,



Athanasios Papadopoulos

Enclosure

cc: Kenneth W. Field (via FedEx (Saturday delivery) and e-mail)(w/enclosure)

January 19, 2012

VIA FEDEX AND E-MAIL

Rachael Lewis
McDermott Will & Emery
600 13th Street, N.W.
Washington, D.C.
20005-3096

**Re: Federal Trade Commission v. OSF Healthcare System, et al.
(Case No. 3:11-cv-50344)**

Dear Rachael:

This letter is in response to your letter to Jim Gardner dated January 17, 2012 and the subpoena served on UnitedHealth Group (“United”) in connection with the above-referenced matter (“Subpoena”).

Request Nos. 2, 3, 4, 9, 10, 11, 14, 15 and 21

Please find enclosed a disc containing documents (FTC_OSF-United-00001 – FTC_OSF-United-01142) which are responsive to Request Nos. 2, 3, 4, 9, 10, 11, 14, 15 and 21 of the Subpoena as set forth in Jim Gardner’s letter to you dated December 23, 2011 (“December Letter”). Please note that these documents have been designated as either “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL” in accordance with the Amended Protective Order (dated January 6, 2012) entered by the Court in this matter.

Request Nos. 1, 5, 6, 13, 19, 22 and 23

With respect to Request Nos. 1, 5, 6, 13, 19, 22 and 23, United is still in the process of gathering responsive documents, if any, as set forth in the December Letter. We hope to have any responsive documents produced to you by the end of next week.

Request No. 12

As for Request No. 12, United stands on its objections as set forth in the December Letter.

Request Nos. 16 and 24

As set forth in the December Letter, United states that no documents are responsive to Request Nos. 16 and 24.

NEAL, GERBER & EISENBERG LLP

Rachael Lewis
January 19, 2012
Page 2

Request Nos. 17, 18 and 25


Documents responsive to Request Nos. 17, 18 (as set forth in the December Letter) and 25 were produced to the Federal Trade Commission pursuant to a civil investigative demand received by United on March 16, 2011. It is our understanding that these documents were provided by the FTC to OSF Healthcare System and Rockford Health System.

Documents Referenced by Michelle Lobe in Transcripts

In your January 17, 2012 you request certain documents referenced by Michelle Lobe in her Investigational Hearing Transcript and/or Deposition Transcript which you believe may be responsive to certain requests contained in the Subpoena (*i.e.*, Request Nos. 7, 8, 18, 19 and 20). Subject to and without waiving United's objections as set forth in the December Letter, we are in the process of determining whether any such documents exist and if such documents are responsive to any of the aforementioned requests.

As always, please contact me or Jim Gardner should you have any questions or if you would like to discuss this matter further. Thank you.

Very truly yours,



Athanasios Papadopoulos

Enclosure

cc: Kenneth W. Field (via FedEx and e-mail)(w/enclosure)

Federal Trade Commission v.
OSF Healthcare System, et al.
Case No. 3:11-cv-50344

United Healthcare Production 1/19/12



FTC_OSF-United-00001 -
FTC_OSF-United-01142

**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 E

Lewis, Rachael

From: Lewis, Rachael
Sent: Tuesday, January 31, 2012 7:25 PM
To: Papadopoulos, Athanasios Tom
Cc: Gardner, James K.
Subject: RE: FTC v. OSF Healthcare System, et al. (Case No. 3:11-cv-50344)
Attachments: Lewis letter .pdf; Letter to R. Lewis - 1-19-12.pdf

Tom,

I wanted to follow-up on the status of UnitedHealthcare's document production. In your letter dated January 19, 2012, you stated: "With respect to Request Nos. 1, 5, 6, 13, 19, 22 and 23, United is still in the process of gathering responsive documents, if any, as set forth in the December Letter. We hope to have any responsive documents produced to you by the end of next week." Can you please provide us with an update on the status of your production?

Regards,
Rachael

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

From: Papadopoulos, Athanasios Tom [<mailto:TPapadopoulos@ngelaw.com>]
Sent: Thursday, January 19, 2012 5:42 PM
To: Lewis, Rachael
Cc: Field, Kenneth W.; Gardner, James K.
Subject: FTC v. OSF Healthcare System, et al. (Case No. 3:11-cv-50344)

Rachael and Ken:

Please see attached correspondence. A copy of this letter and the referenced disc are being sent to you by FedEx for delivery tomorrow.

--Tom

Athanasios (Tom) Papadopoulos
NEAL • GERBER • EISENBERG

Neal, Gerber & Eisenberg LLP
Two North LaSalle Street • Suite 1700
Chicago IL • 60602-3801
312.269.5982 direct • 312.429.3575 fax
tpapadopoulos@ngelaw.com • www.ngelaw.com

Please consider the environment before printing this email.

TAX ADVICE DISCLOSURE

Any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

CONFIDENTIALITY NOTICE

This communication is confidential and may contain privileged information. If you have received it in error, please notify the sender by reply e-mail and immediately delete it and any attachments without copying or further transmitting the same.

Lewis, Rachael

From: Lewis, Rachael
Sent: Wednesday, February 01, 2012 3:07 PM
To: Papadopoulos, Athanasios Tom
Cc: Gardner, James K.
Subject: RE: FTC v. OSF Healthcare System, et al. (Case No. 3:11-cv-50344)

Tom,

Please let this correspondence serve as notice that if we do not hear from you by close of business today, we will take that to mean that UnitedHealthcare does not intend to provide additional documents regarding Request Nos. 1, 5, 6, 13, 19, 22 and 23. Please let me know if you have any questions or would like to discuss further.

Regards,
Rachael

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

From: Lewis, Rachael
Sent: Tuesday, January 31, 2012 7:25 PM
To: 'Papadopoulos, Athanasios Tom'
Cc: 'Gardner, James K.'
Subject: RE: FTC v. OSF Healthcare System, et al. (Case No. 3:11-cv-50344)

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Rachael

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

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Sent: Thursday, January 19, 2012 5:42 PM
To: Lewis, Rachael
Cc: Field, Kenneth W.; Gardner, James K.
Subject: FTC v. OSF Healthcare System, et al. (Case No. 3:11-cv-50344)

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Cc: Gardner, James K.
Subject: RE: FTC v. OSF Healthcare System, et al. (Case No. 3:11-cv-50344)

Tom,

Can you please tell us whether you are intending to produce additional documents? Your letter indicated that you would be producing additional documents by the end of last week. We do not believe that we have received all of the relevant documents referenced in Ms. Lobe's testimony. It is now Wednesday and we need a status update so that we know whether we need to pursue this matter with Judge Chappell if necessary. Please let me know if you would like to discuss further.

Regards,
Rachael

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

From: Papadopoulos, Athanasios Tom [mailto:TPapadopoulos@ngelaw.com]
Sent: Wednesday, February 01, 2012 3:33 PM
To: Lewis, Rachael
Cc: Gardner, James K.
Subject: RE: FTC v. OSF Healthcare System, et al. (Case No. 3:11-cv-50344)

Rachael:

I just returned to the office from this morning's hearing. I hope to be able to provide you with an update regarding the document requests by the close of business tomorrow.

--Tom

Athanasios (Tom) Papadopoulos
NEAL • GERBER • EISENBERG

Neal, Gerber & Eisenberg LLP
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Regards,
Rachael

Rachael V. Lewis
McDermott Will & Emery LLP
600 13th Street NW
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202-756-8709 | rlewis@mwe.com

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Rachael

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McDermott Will & Emery LLP
600 13th Street NW
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Subject: FTC v. OSF Healthcare System, et al. (Case No. 3:11-cv-50344)

Rachael and Ken:

Please see attached correspondence. A copy of this letter and the referenced disc are being sent to you by FedEx for delivery tomorrow.

--Tom

Athanasios (Tom) Papadopoulos
NEAL ▪ GERBER ▪ EISENBERG

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IRS Circular 230 Disclosure: To comply with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained herein (including any attachments), unless specifically stated otherwise, is not intended or written to be used, and cannot be used, for the purposes of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter herein.

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Please visit <http://www.mwe.com/> for more information about our Firm.



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)

1. TO Michelle Lobe UnitedHealthcare of Illinois, Inc. c/o James K. Gardner, Esq. Neal, Gerber & Eisenberg LLP Two North LaSalle Street, Chicago, IL 60602	2. FROM <p style="text-align: center;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	--

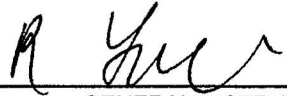
This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION McDermott Will & Emery LLP 227 West Monroe Street Chicago, IL 60606	4. YOUR APPEARANCE WILL BE BEFORE Court reporter to be determined 5. DATE AND TIME OF DEPOSITION February 9, 2012, 9:00 a.m.
---	---

6. SUBJECT OF PROCEEDING

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

7. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Chappell Chief Administrative Law Judge Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Rachael V. Lewis McDermott Will & Emery LLP 600 13th Street, N.W. Washington, D.C. 20005-3096 (202) 756-8709
--	---

DATE SIGNED <p style="font-size: 1.5em;">1/23/2012</p>	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
---	--

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)