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

In the Matter of	)	
OSF Healthcare System, a corporation, and	)	Docket No. 9349 **PUBLIC**
Rockford Health System, a corporation.	)	

RESPONDENTS OSF HEALTHCARE SYSTEM'S AND ROCKFORD HEALTH SYSTEM'S MOTION FOR SANCTIONS FOR COMPLAINT COUNSEL'S FAILURE TO TIMELY PRODUCE INFORMATION

Pursuant to Rule 3.38(b) of the Federal Trade Commission's ("the Commission") Rules of Adjudicative Practice and Paragraphs 4 and 5 of the Scheduling Order, Respondents OSF Healthcare System ("OSF") and Rockford Health System ("RHS") respectfully submit this Motion for Sanctions for Complaint Counsel's Failure To Timely Produce Information as required by Rule 3.31(b)(2). Specifically, Complaint Counsel's failure to timely produce certain third party managed care organization claims data ("MCO claims data") received during the course of its investigation has prejudiced Respondents' ability to present their defense.

Rule 3.31(b)(2) requires Complaint Counsel "within 5 days of receipt of a respondent's answer to the complaint and without awaiting a discovery request" to provide "[a] copy of . . . all documents and electronically stored information . . . in the possession, custody or control of the Commission . . . that are relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent." 16 C.F.R. § 3.31(b)(2). The MCO claims data comprise the actual claims that Rockford-area hospitals submitted to MCOs for payment for services provided to their members along with the actual reimbursements the MCOs paid the

hospitals for those services. (Castle Decl., ¶ 4) (attached as Exhibit B to Respondents' Memorandum in Support of Motion for Sanctions for Complaint Counsel's Failure To Timely Produce Information). MCO claims data are, therefore, unquestionably relevant to "the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent." 16 C.F.R. § 3.31(b)(2). Respondents in this case both filed their answers to the Complaint on December 12, 2011. Therefore, pursuant to Rule 4.3, Complaint Counsel had to produce the MCO claims data no later than December 19, 2011. 16 C.F.R. § 4.3. Complaint Counsel did not produce certain MCOs' claims data until January 31, 2012 or more than six weeks later, however.[1] (Exhibit B, ¶ 11).

Complaint Counsel's unjustified delay has prejudiced Respondents' ability to review and analyze the MCO claims data as part of preparing their defense, especially given the expedited nature of this proceeding. 16 C.F.R. § 3.1 ("[T]he Commission's policy is to conduct such proceedings expeditiously. In the conduct of such proceedings the Administrative Law Judge and counsel for all parties shall make every effort at each stage of a proceeding to avoid delay."). Accordingly, Respondents seek an Order precluding Complaint Counsel from introducing into evidence any opinions or testimony based upon analysis of any MCO claims data. Respondents' proposed Order is reasonable in light of the material withheld and would mitigate the prejudice Respondents have suffered because of Complaint Counsel's dilatory production.

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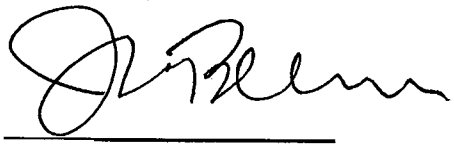
[1] Moreover, Complaint Counsel's obligation to produce the MCO claims data attached even prior to the time specified in Rule 3.31(b)(2), because the scheduling order in the related federal district court preliminary injunction proceeding required that "no later than December 5, 2011, [Complaint Counsel] shall produce, for inspection and copying, all investigational hearing transcripts of, and documents and materials provided by, third parties during the investigation of [Respondents'] affiliation unless the third party has moved to prevent such disclosure by December 5, 2011." *Fed. Trade Comm'n v. OSF Healthcare System and Rockford Health System*, No. 3:11-cv-50344 (N.D. Ill.) (Dkt. No. 63) (attached as Exhibit A to Respondents' Memorandum in Support of Motion for Sanctions for Complaint Counsel's Failure To Timely Produce Information).

Counsel for Respondents have attempted to confer in good faith with Complaint Counsel in an effort to mitigate the prejudice Respondents have suffered due to Complaint Counsel's belated production of the MCO claims data without the Court's intervention. Respondents and Complaint Counsel have been unable to reach an agreement. Therefore, Respondents respectfully move the Court for an Order precluding Complaint Counsel from introducing into evidence any opinions or testimony based upon analysis of any MCO claims data for the reasons set forth in Respondent's accompanying Memorandum in support of this Motion.

Dated: February 22, 2012

Respectfully submitted,



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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
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OSF Healthcare System, a corporation, and	)	Docket No. 9349 **PUBLIC**
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STATEMENT REGARDING MEET AND CONFER
PURSUANT TO 16 C.F.R. § 3.22(g)

On February 7, 2012 at approximately 3:31 p.m., Respondent Rockford Health System's Counsel, Mr. Jeffrey Brennan, sent a letter to Kenneth Field, Complaint Counsel, regarding the FTC's failure to previously produce the payor claims data to Respondents. Mr. Field responded to Mr. Brennan via email at 9:52 p.m. on February 7, 2012. Mr. Brennan and Mr. Field exchanged several letters or email communications regarding the outstanding issues raised by Respondents' Motion for Sanctions for Complaint Counsel's Failure To Timely Produce Information ("Respondents' Motion") on the following dates: February 8, 2012 (letter from Brennan to Field), February 9, 2012 (email from Field to Brennan), and February 13, 2012 (letter from Brennan to Field).

On February 14, 2012 at approximately 10:30 p.m., Mr. Brennan conferred telephonically with Mr. Field in an effort in good faith to resolve the outstanding issues raised in Respondents' Motion and inquired whether Complaint Counsel would agree that their experts would be prohibited from offering any opinion based, in whole or in part, on payor claims data. Counsel were unable to reach an agreement on the outstanding items during that telephone conversation.

On February 15, 2012 at approximately 6:39 p.m., Mr. Field emailed Mr. Brennan and stated that Complaint Counsel would not agree to refrain from presenting any opinions or testimony based upon analysis of the MCO claims data. Instead, Mr. Field indicated that Complaint Counsel was willing to agree that Respondents' expert, Dr. Noether, be able to submit an additional report using claims data obtained from MCOs up until April 11, 2012, provided that Complaint Counsel receive an additional 2 hours to depose Ms. Noether on the additional report.

Mr. Brennan and Mr. Field spoke again telephonically from approximately 4:10 p.m. to 4:30 p.m. on February 17, 2012 in good faith to resolve the outstanding issues raised in Respondents' Motion. Mr. Brennan told Mr. Field that Respondents did not agree to the remedy Complaint Counsel provided because it did not cure the prejudice that Respondents suffered. During that telephone conversation, Counsel again were unable to reach an agreement on the outstanding items.

At 8:06 p.m. on February 17, 2012, Mr. Field left a voicemail for Mr. Brennan. Mr. Field indicated on that voicemail that Complaint Counsel believed they knew where certain payor claims data that they claimed to have produced was located within their November 29, December 5, and December 6, 2011 productions and offered for the parties to talk with their economists in an attempt for Complaint Counsel to point out the location of that data.

Mr. Brennan and Mr. Field exchanged a number of email communications on February 18, 2012 and on February 20, 2012 in response to Mr. Field's voicemail and in an attempt to resolve the outstanding issues raised in Respondents' Motion.

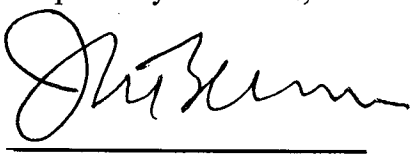
On February 21, 2012, Nicole Castle, counsel for Respondent Rockford Health System, Jeremy Morrison, counsel for the FTC, and economists and/or litigation technology specialists

on behalf of each party conferred telephonically in an attempt for Complaint Counsel to identify where within their November 29, December 5, or December 6 productions any payor claims data (other than BlueCross Blue Shield) was located. Complaint Counsel were unable to identify the location of any payor claims data other than BlueCross Blue Shield.

At approximately 9:30 p.m. on January 21, 2011, Mr. Brennan sent an email to K. Field, copying J. Morrison, informing Complaint Counsel that given their failure to locate the payor claims data within their November or December 2011 productions and given that the parties were unable to reach resolution regarding the issues raised in Respondents' Motion, it was concluded that Respondents and Complaint Counsel were at an impasse regarding the issues raised in the foregoing Motion.

Dated: February 22, 2012

Respectfully submitted,



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UNITED STATES OF AMERICA
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[PROPOSED] ORDER

Upon consideration of Respondents OSF Healthcare System's and Rockford Health System's Motion for Sanctions for Complaint Counsel's Failure To Timely Produce Information, and any opposition thereto,

IT IS HEREBY ORDERED that Respondents' Motion is GRANTED.

IT IS FURTHER ORDERED that Complaint Counsel shall not introduce into evidence any opinions or testimony based upon analysis of MCO claims data.

D. Michael Chappell
Administrative Law Judge

Date: February __, 2012

CERTIFICATE OF SERVICE

I, Nicole L. Castle, hereby certify that I served a true and correct copy of the foregoing Public Version of Respondents OSF Healthcare System's and Rockford Health System's Motion for Sanctions for Complaint Counsel's Failure To Timely Produce Information, Statement Regarding Meet and Confer, and Proposed Order upon the following individuals by hand on February 22, 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, Nicole L. Castle, hereby certify that I served a true and correct copy of the foregoing Public Version of Respondents OSF Healthcare System's and Rockford Health System's Motion for Sanctions for Complaint Counsel's Failure To Timely Produce Information, Statement Regarding Meet and Confer, and Proposed Order upon the following individuals by electronic mail on February 22, 2012:

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Jeffrey H. Perry
Kenneth W. Field
Richard Cunningham, Esq.
Jeremy P. Morrison
Katherine A. Ambrogi
Andrea Zach
Jeanne Liu
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Complaint Counsel

Dated: February 22, 2012

Nicole L. Castle
Counsel for Respondent
Rockford Health System

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RESPONDENTS OSF HEALTHCARE SYSTEM'S AND ROCKFORD HEALTH SYSTEM'S MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS FOR COMPLAINT COUNSEL'S FAILURE TO TIMELY PRODUCE INFORMATION

INTRODUCTION

Respondents OSF Healthcare System ("OSF") and Rockford Healthcare System ("RHS") respectfully request that the Court grant their Motion for Sanctions for Complaint Counsel's Failure To Timely Produce Information ("the Motion"). Complaint Counsel unjustifiably failed to produce certain managed care organizations' ("MCOs") claims data with their mandatory initial disclosures until January 31, 2012. 16 C.F.R. § 3.31(b)(2). Complaint Counsel's inexcusable failure to abide by the Commission's Rules of Adjudicative Practice has prejudiced Respondents' ability to prepare their defenses by denying them of more than six weeks of time during which they could have reviewed, analyzed, and potentially incorporated the data into their defense. Pursuant to Rule 3.38(b)(4), this Court should issue an Order precluding Complaint Counsel from introducing into evidence any opinions or testimony based upon analysis of MCO claims data. 16 C.F.R. § 3.38(b)(4). Respondents' proposed remedy is reasonable and narrowly tailored to the material withheld, and this Court should grant Respondents' Motion accordingly.

LEGAL AUTHORITIES

Rule 3.31(b)(2) requires Complaint Counsel "within 5 days of receipt of a respondent's answer to the complaint and without awaiting a discovery request," to produce "[a] copy of . . . all documents and electronically stored information . . . in the possession, custody, or control of the Commission . . . that are relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent." 16 C.F.R. § 3.31(b)(2). The Commission's requirement exists because "due process requires that [Respondents] are entitled to appropriate discovery *in time* to reasonably and adequately prepare themselves, and their defenses, before facing the charges in the administrative 'trial.'" *Standard Oil Co. v. FTC*, 475

F. Supp. 1261, 1275 (N.D. Ind. 1979) (*citing Morgan v. United States*, 304 U.S. 1 (1938)) (emphasis added).

Rule 3.38(b) provides that "[i]f a party . . . fails to comply with any discovery obligation . . . the Administrative Law Judge . . . may take such action in regard thereto as is just" to remedy the prejudice suffered by the other party. 16 C.F.R. § 3.38(b). The ALJ may order that "the [non-compliant] party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer, agent, expert, or fact witness, or the documents or other evidence, or upon any other improperly withheld or undisclosed materials, information, witnesses, or other discovery." 16 C.F.R. § 3.38(b)(4).

In *In re Int'l Tel. & Tel. Corp.*, the Commission described the circumstances when remedies under the pre-2009 Rule 3.38 were appropriate as:

> [S]anctions under Rule 3.38 should be imposed only if (1) production of the requested material has been mandated by a subpoena or specific discovery order issued by an ALJ or the Commission and directed at the party (or its officer or agent) from whom the material is sought; (2) the party's failure to comply is unjustified; and (3) the sanction imposed 'is reasonable in light of the material withheld and the purposes of Rule 3.38(b).'

104 F.T.C. 280, 449 (1984) (*quoting In re Grand Union Co.*, 102 F.T.C. 812, 1089 (1983)). The 2009 amendments to Rule 3.38 consolidated "the sanctions for failure to comply with discovery and disclosure requirements." *Rules of Practice*, 74 Fed. Reg. 1815 (Jan. 13, 2009).

FACTUAL BACKGROUND

Respondents entered into an affiliation agreement on January 31, 2011 whereby OSF would acquire all of RHS' operating assets in Rockford, Illinois. (OSF Answer, ¶ 19, RHS Answer, ¶ 19). Complaint Counsel began their investigation of the transaction in about March 2011.

On November 17, 2011, the Commission issued an administrative complaint challenging the transaction. (Compl. at 1). The next day, Complaint Counsel filed a complaint with the District Court for the Northern District of Illinois seeking a temporary restraining order and preliminary injunction to prevent the transaction from closing pending the completion of this administrative proceeding. *FTC v. OSF Healthcare System and Rockford Healthcare System*, No. 3:11-cv-50344 (N.D. Ill.) (Dkt. No. 1) (Nov. 18, 2011).

On December, 1, 2011, the District Court entered an agreed scheduling order that required Complaint Counsel to "produce, for inspection and copying, all . . . documents and materials provided by . . . third parties during the investigation of Defendants' affiliations . . ." by December 5, 2011. *FTC v. OSF Healthcare System and Rockford Healthcare System*, No. 3:11-cv-50344 (Dkt. No. 63) (Dec. 1, 2011) (attached as Exhibit A). Complaint Counsel produced materials to Respondents on November 29, December 5, and December 6, 2011. (Decl. of Nicole L. Castle, ¶ 3) ("Castle Decl.") (attached as Exhibit B). On December 5, 2011, Complaint Counsel affirmatively represented that they had satisfied "the Commission's obligations pursuant to Paragraph 1 of the [District Court's] December 1, 2011, order." (Letter from J. Morrison to N. Castle, Dec. 5, 2011) (attached as Exhibit C).

Complaint Counsel had requested claims data from numerous MCOs in March 2011. (*See, e.g.*, Civil Investigative Demand to Aetna, Inc., FTC-ROPE-001722 (Mar. 14, 2011); Civil Investigative Demand to CIGNA, FTC-ROPE-001842 (Mar. 14, 2011)) (collectively attached as Exhibit D). Claims data comprise the actual claims that hospitals submitted to MCOs for payment for services provided to their members along with the actual reimbursements the MCOs paid the hospitals. (Castle Decl., ¶ 4). When Respondents' counsel received Complaint

Counsel's productions in November and December 2011, they diligently searched for the MCO claims data. (*Id.*). Respondents found claims data from BCBS-IL, but were unable to locate any payor claims data from Aetna, Cigna, Coventry, ECOH, Humana, or United within Complaint Counsel's productions. (*Id.*). Respondent's counsel did not know what, if anything, Complaint Counsel had received from those MCOs, especially in light of Complaint Counsel's general representation that they had already produced all third party materials. (Castle Decl., ¶¶ 4-5; Exhibit C). Respondents, thus, issued subpoenas to certain MCOs requesting claims data on December 9, 2011 and December 21, 2011 as part of the district court proceeding and this administrative proceeding, respectively. (Castle Decl., ¶ 6-7 *and see, e.g.*, RHS Rule 45 Subpoena to Aetna, Inc., Dec. 9, 2011; RHS Subpoena *Duces Tecum* to CIGNA, Dec. 21, 2011) (both attached as Exhibit E).

Only upon receiving the MCOs' responses to Respondents' subpoenas did Respondents learn that MCOs had previously produced claims data to Complaint Counsel during the pre-complaint investigation, which Respondents had not found in Complaint Counsel's November and December 2011 productions. (Castle Decl. ¶ 8 *and see, e.g.*, Letter from Lewis to Kuzniar, Jan. 17, 2012; Letter from Lewis to Dennis, Jan. 17, 2012) (both attached as Exhibit F) (Respondent's counsel confirming January 6, 2012 discussions with MCOs). After learning this, Respondents explored whether they were at fault by not finding the data in Complaint Counsel's November and December 2011 productions. This was a prudent response, especially in light of Complaint Counsel's unambiguous representation that they had produced everything they were supposed to produce. Respondents reviewed the FTC productions again, and, when they found

no claims data, asked Respondents' economic consultants to review the materials for the same purpose. (Castle Decl. ¶ 9).

Respondents' counsel communicated with Complaint Counsel on January 31, 2011 to ask where they could locate the MCOs' claims data within Complaint Counsel's prior productions. (Castle Decl. ¶ 10). In response, Complaint Counsel produced a hard drive containing claims data later that day. (Castle Decl. ¶ 11). Following receipt of the hard drive, Respondents' counsel asked Complaint Counsel whether they had previously produced the claims data contained in the hard drive. (Letter from Brennan to Field, Feb. 7, 2012) (attached as Exhibit G). When Complaint Counsel responded later that day, they neither confirmed nor denied that they had previously produced all the MCOs' claims data. (Email from Field to Brennan, Feb. 7, 2012) (attached as Exhibit H). The next day, Respondents' counsel again asked Complaint Counsel whether they had previously produced the claims data produced on January 31 and, if not, why. (Letter from Brennan to Field, Feb. 8, 2012) (attached as Exhibit I). Complaint Counsel responded the next day, but again neither confirmed nor denied that they had previously produced all the MCOs' claims data. (Email from Field to Brennan, Feb. 9, 2012) (attached as Exhibit J). Respondents' counsel replied on February 13, 2012 and again requested Complaint Counsel to identify the claims data within their prior productions. (Letter from Brennan to Field, Feb. 13, 2012) (attached as Exhibit K). Complaint Counsel responded two days later, and, for the first time, acknowledged that they could not confirm producing certain MCOs' data prior to January 31. (Email from Field to Brennan, Feb. 15, 2012) (attached as Exhibit L). Moreover, the productions Respondents received prior to January 31 did not contain the claims data in the locations where Complaint Counsel later claimed they could be found. (Castle Decl., ¶¶ 14-16;

Decl. of R. Venkata, ¶ 3 (attached as Exhibit M); Decl. of Colin O'Laughlin, ¶ 7 (attached as Exhibit N)).

Complaint Counsel received the MCOs' claims data well before filing this case. (*See e.g.*, Email from Aetna to FTC, FTC-ROPE-000865 (Aug. 26, 2011); Email from CIGNA to FTC, FTC-ROPE-000718 (Nov. 4, 2011) (both attached as Exhibit O). Comparing the materials that Complaint Counsel produced in November and December 2011 with what they produced on January 31, 2012, however, revealed that Complaint Counsel neither produced all MCOs' claims data in November and December 2011, as required, nor correctly represented to Respondents what they had received from MCOs and produced to Respondents. (Decl. of Colin O'Laughlin, ¶¶ 3-6).

ARGUMENT

Complaint Counsel's unjustified failure to timely produce MCO claims data with their mandatory initial disclosures has prejudiced Respondents' ability to adequately prepare their defenses for the administrative hearing. Accordingly, this Court should grant Respondents' Motion and issue an Order pursuant to Rule 3.38(b)(4) precluding Complaint Counsel from introducing into evidence any opinions or testimony based upon analysis of any MCO claims data.

Rule 3.31(b)(2) provides unequivocally that Complaint Counsel had to produce within *five days* of receiving Respondents' Answers a copy of "all documents and electronically stored information . . . in the possession, custody, or control of the Commission . . . that are relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent." 16 C.F.R. § 3.31(b)(2). Here, Respondents served their Answers on Complaint Counsel on December 12, 2011. (OSF Answer; RHS Answer). Complaint Counsel had until

December 19, 2011, to fulfill their disclosure obligations in this proceeding. 16 C.F.R. §§ 3.31(b)(2); 4.3.

The Commission's administrative process is, of course, proceeding in tandem with the related federal court proceeding. Complaint Counsel previously represented that materials they produced for that proceeding would also constitute part of Complaint Counsel's Rule 3.31 initial disclosures. (Letter from Reynolds to Castle, Dec. 19, 2011) (attached as Exhibit P). Additionally, the U.S. District Court granted the parties' agreed scheduling order. (Exhibit A). That scheduling order provided that Complaint Counsel would produce by December 5, 2011 all materials they received from third parties during their pre-complaint investigation. (*Id.*). Therefore, Complaint Counsel were obligated to produce all third-party materials they possessed to Respondents even before the December 19, 2011 deadline specified in Rule 3.31(b)(2).

However, Complaint Counsel failed to produce certain MCOs' claims data to Respondents until January 31, 2012, notwithstanding having all the claims data in their possession well prior to initiating this case. (Exhibit O). Respondents had no way of knowing that Complaint Counsel potentially failed to produce more claims data (or that Respondents may have erred in not finding it) until they received certain MCOs' responses to Respondents' subpoenas, which represented that Complaint Counsel had previously requested and received that data from the MCOs. (Exhibit F). Complaint Counsel lack any justification for not producing the claims data until, at Respondents' request, more than six weeks after the time permitted by Rule 3.31(b)(2) and more than eight weeks after the time permitted by the District Court's scheduling order (Exhibit A), despite unambiguous requirements to do so.

The fact that Complaint Counsel ultimately produced the claims data, at Respondent's request, does not excuse their failure to comply with the Commission's Rules and the District Court's Scheduling Order. Complaint Counsel's unjustified delay has prejudiced Respondents' ability to prepare their defenses for the administrative hearing. Respondents have lost six to eight weeks in a compressed pre-hearing discovery period, during which they and their experts could have analyzed the voluminous MCO claims data for potential incorporation into their defense. As the Court is aware, time is of the essence during Part 3 adjudicative proceedings. *See, e.g.*, 16 C.F.R. § 3.1 ("To the extent practicable and consistent with requirements of law, the Commission's policy is to conduct such proceedings expeditiously.").

Complaint Counsel will doubtlessly claim that the prejudice Respondents assert is self-inflicted because Respondents should have pursued the missing claims data more aggressively. However, Complaint Counsel bear the burden of complying with their discovery obligations. 16 C.F.R. § 3.31(b)(2). Respondents do not bear the burden of discovering whether Complaint Counsel omitted responsive information from their discovery obligations, especially when Complaint Counsel previously represented that they had complied, and when Respondents could not know what Complaint Counsel possessed but did not include in their productions. (Exhibit C). The facts reveal that Complaint Counsel did not confirm whether they had, in fact, produced all the claims data in their possession prior to representing that they had. (Exhibit L).

Respondents' proposed remedy for Complaint Counsel's violation is reasonable and tailored to mitigate the prejudice Respondents have suffered. An Order precluding Complaint Counsel from introducing into evidence any opinions or testimony based upon analysis of any MCO claims data is entirely within the Court's discretion and will ensure that Complaint

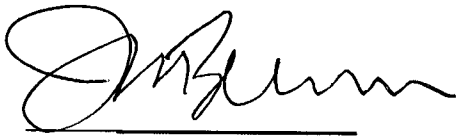
Counsel will not gain an unfair advantage during the administrative hearing by virtue of their depriving Respondents of the ability to review, analyze, and potentially incorporate the claims data into their defense. 16 C.F.R. § 3.38(b)(4); *In re Int'l Tel. & Tel. Corp.*, 104 F.T.C. at 449. During their meet and confer, Complaint Counsel proposed permitting Respondents until April 11, 2012 to produce an additional expert report analyzing MCO claims data. (Exhibit L). Complaint Counsel's proposal does not cure Respondents' prejudice because it cannot make up for Respondents' lost opportunities earlier in the Court's schedule when Respondents not only could have reviewed and analyzed the MCO claims data, but also asked MCOs about their claims data in depositions or tested any theories or conclusions gleaned from analyzing the data. Moreover, the timing of Complaint Counsel's proposed additional report would unavoidably conflict with other provisions of this Court's Scheduling Order.

CONCLUSION

Complaint Counsel's failure to produce all claims data when required and, then, misstating compliance with those obligations and their justification that Respondents should have known they did not receive all the claims data that they did not know Complaint Counsel had are indefensible. Respondents respectfully request that the Court grant their Motion and issue an Order precluding Complaint Counsel from introducing into evidence any opinions or testimony based upon analysis of MCO claims data.

Dated: February 22, 2012

Respectfully submitted,



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Attorneys for Respondent OSF Healthcare System

CERTIFICATE OF SERVICE

I, Nicole L. Castle, hereby certify that I served a true and correct copy of the foregoing Public Version of Respondents OSF Healthcare System's and Rockford Healthcare System's Memorandum in Support of Respondents OSF Healthcare System's and Rockford Healthcare System's Motion for Sanctions and Proposed Order upon the following individuals by hand on February 22, 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, Nicole L. Castle, hereby certify that I served a true and correct copy of the foregoing Public Version of Respondents OSF Healthcare System's and Rockford Healthcare System's Memorandum in Support of Respondents OSF Healthcare System's and Rockford Healthcare System's Motion for Sanctions and Proposed Order upon the following individuals by electronic mail on February 22, 2012:

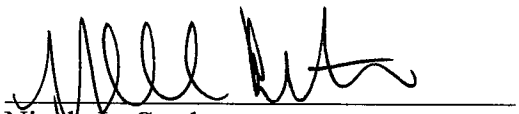
Matthew J. Reilly
Jeffrey H. Perry
Kenneth W. Field
Richard Cunningham, Esq.
Jeremy P. Morrison
Katherine A. Ambrogi
Andrea Zach
Jeanne Liu
Stephanie Reynolds
Theresa Lau

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

Dated: February 22, 2012



Nicole L. Castle
Counsel for Respondent
Rockford Health System

EXHIBIT A

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Frederick J. Kapala	Sitting Judge if Other than Assigned Judge	P. Michael Mahoney
CASE NUMBER	11 C 50344	DATE	12/1/2011
CASE TITLE	Federal Trade Commission vs. OSF Healthcare System, and Rockford Health System		

DOCKET ENTRY TEXT:

The parties' agreed motion for entry of a preliminary injunction hearing schedule [59] is granted. Discovery hearing set for January 3, 2012 at 1:30 PM.

P. Michael Mahoney

■[For further details see text below.]

Notices mailed by Judicial staff.

STATEMENT

1. Beginning on November 29, 2011, and ending no later than December 5, 2011, the Plaintiff shall produce, for inspection and copying, all investigational hearing transcripts of, and documents and materials provided by, third parties during the investigation of Defendants' affiliation unless the third party has moved to prevent such disclosure by December 5, 2011.

2. On December 5, 2011, the Plaintiff and Defendants shall disclose the identity of any additional expert witness(es) and describe the topic(s) of his or her testimony.

3. On December 19, 2011, Defendants shall produce any additional affidavits or declarations from fact witnesses employed by or otherwise affiliated with the Defendants.

4. On December 20, 2011, the Plaintiff and Defendants shall identify up to 5 potential fact witnesses per side and each previously disclosed expert witness who may be called to testify at the evidentiary hearing on Plaintiff's Motion for Preliminary Injunction.

5. On January 11, 2012, the Plaintiff and Defendants shall exchange any additional, supplemental, or rebuttal affidavits or declarations from their previously disclosed expert witnesses.

6. Within 48 hours of receipt, and in all cases by January 13, 2012, the Plaintiff and Defendants shall exchange any additional affidavits or declarations from third-party fact witnesses.

7. On January 18, 2012, the Plaintiff and Defendants shall: (a) exchange the investigational hearing testimony excerpts they intend to offer as evidence from those fact witnesses whose investigational hearings the FTC conducted during the course of its investigation; and (b) identify each documentary exhibit they intend to

offer as evidence, including those the FTC obtained from third parties during the course of its investigation.

8. Prior to the preliminary injunction hearing, the Plaintiff and the Defendants collectively shall each be entitled to depose the other's expert witnesses and up to eight fact witnesses, including third parties. Depositions of expert witnesses shall be limited to seven hours. Depositions of third-party fact witnesses shall be limited to six hours. The party noticing a third-party fact witness deposition shall be entitled to four hours of deposition time and the other party shall be entitled to two hours of deposition time. Plaintiff shall be entitled to five hours of deposition time when deposing any of Defendant's employees who testified in an investigational hearing. Plaintiff shall be entitled to six hours of deposition time when deposing any other witness employed by or otherwise affiliated with Defendants.

9. On January 20, 2012, the Plaintiff and Defendants shall identify the four witnesses from the preliminary lists created pursuant to Paragraph 4 that each side will present at the evidentiary hearing on Plaintiff's Motion for Preliminary Injunction.

10. On January 24, 2012, the parties shall exchange: (a) the excerpts they intend to offer as evidence from the transcripts of the depositions of the expert and fact witnesses whose depositions were taken pursuant to Paragraph 8 of this Order; and (b) any counter-designations to the investigational hearing testimony excerpts that the other party identified pursuant to Paragraph 7(a).

11. On January 27, 2012, the parties shall exchange any counter-designations to the deposition excerpts that the other party identified pursuant to Paragraph 10(a).

12. Consistent with the Court's November 23, 2011 order:

a. a three-day evidentiary hearing on Plaintiff's Motion for Preliminary Injunction shall commence at 9 a.m. on February 1, 2012, with a maximum of four witnesses for Plaintiff and four witnesses for Defendants collectively; b. in lieu of opening statements, the parties shall file supplemental pre-hearing memoranda, not to exceed 15 pages in length, on January 27, 2012.

c. in lieu of closing arguments, the parties shall file post-hearing briefs, not to exceed 20 pages, and proposed factual findings and conclusions of law on February 14, 2012; and;

d. the parties may file responses to the post-trial briefs, not to exceed 15 pages in length, on February 21, 2012.

Courtroom Deputy	LW

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

DECLARATION OF NICOLE L. CASTLE IN SUPPORT OF RESPONDENTS OSF HEALTHCARE SYSTEM'S AND ROCKFORD HEALTH SYSTEM'S MOTION FOR SANCTIONS FOR COMPLAINT COUNSEL'S FAILURE TO TIMELY PRODUCE INFORMATION

I, Nicole L. Castle, state as follows:

1. I am over the age of 18 years old. The statements in this Declaration are made based on my own personal knowledge. If called to testify in this matter, I would and could testify competently and truthfully to the information contained in this Declaration.

2. I am an attorney duly licensed to practice law in the District of Columbia and Massachusetts. I am an associate at McDermott Will & Emery LLP ("MWE"), counsel for Rockford Health System ("RHS") in the above-captioned matter.

3. As part of my duties and responsibilities in this matter, I reviewed certain documents and data Complaint Counsel produced in this action. Those documents and data include, but are not limited to, those items produced by Complaint Counsel on November 29, December 5, and December 6, 2011.

4. In particular, I searched the productions received from Complaint Counsel on November 29, December 5, and December 6 to determine whether they included payor claims data. Payor claims data consists of the actual individual claims that Rockford-area hospitals

submitted to managed care organizations ("MCOs") for payment for inpatient and outpatient services provided to their members along with the actual amount of reimbursements the MCOs paid the hospitals for those services. The only payor claims data that I located within those November and December productions was from BlueCross BlueShield of Illinois ("BCBS"). I was unable to locate any payor claims data for any third-party MCO besides BCBS (hereafter "non-BCBS payor claims data").

5. To confirm that Complaint Counsel's November and December 2011 productions did not contain non-BCBS payor claims data, I worked with Charles River Associates ("CRA"), an economic consulting firm that Respondents have retained to help examine the data produced in this matter. CRA confirmed that Complaint Counsel's November and December 2011 productions did not contain non-BCBS payor claims data.

6. Upon confirmation by CRA that Complaint Counsel's productions did not include non-BCBS payor claims data, Respondents subpoenaed third-party MCOs to provide, among other things, payor claims data.

7. In particular, RHS subpoenaed four MCOs: Aetna, CIGNA, Employers' Coalition on Health ("ECOH"), and UnitedHealth Group, and requested, among other things, their payor claims data. Counsel for OSF Healthcare System ("OSF") subpoenaed other MCOs requesting similar payor claims data. RHS issued its subpoenas to MCOs on December 9, 2011 in the related federal action, *FTC v. OSF Healthcare System and Rockford Health System*, 3:11-cv-50344 (N.D. Ill.) and on December 21, 2011 in this matter.

8. In response to those subpoenas, the MCOs informed Respondents that they had previously produced the requested payor claims data to Complaint Counsel in response to the Civil Investigative Demands ("CIDs") issued by the FTC as part of their investigation. This was

the first time that Respondents became aware that Complaint Counsel had received payor claims data for any MCO besides BCBS.

9. Upon learning that information, and under my supervision, individuals at MWE again searched Complaint Counsel's prior productions to ensure that they did not contain any non-BCBS payor claims data. They did not. In addition, attorneys at MWE again asked CRA to check and confirm that the November and December productions did not contain any non-BCBS payor claims data. CRA again confirmed that the productions did not include the non-BCBS payor claims data.

10. I understand that on January 31, 2012, counsel for Respondents communicated with Complaint Counsel by telephone to ask where the non-BCBS payor claims data was located within Complaint Counsel's November and December 2011 productions.

11. I further understand that on January 31, 2012, Complaint Counsel provided a hard drive to Respondents that contained non-BCBS payor claims data as well as the BCBS payor claims data previously produced by Complaint Counsel.

12. Respondents again worked with CRA to determine the contents of the January 31, 2012 hard drive. CRA confirmed that the non-BCBS payor claims data that Complaint Counsel provided to Respondents on January 31, 2012 was not contained in Complaint Counsel's November or December 2011 productions.

13. In addition, Respondents engaged a second firm, Compass Lexecon, to compare the January 31, 2012 production to the November and December 2011 productions. Compass Lexecon also confirmed that the non-BCBS payor claims data that was contained in the hard drive produced by Complaint Counsel on January 31, 2012 was not contained in Complaint Counsel's November or December 2011 productions.

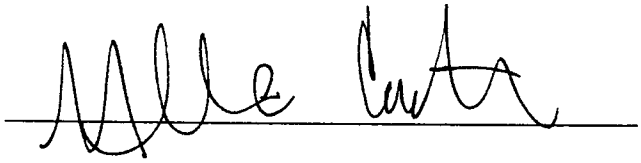
14. On February 21, 2012 at approximately 10:45 am, I participated in a telephone call with Jeremy Morrison, Esq. and Ignor Velikson of the FTC, and Colin O'Laughlin and Thanh Bui of Compass Lexecon. The purpose of that telephone conversation was for Complaint Counsel to identify where the non-BCBS payor claims data was located within their prior productions. Complaint Counsel informed us during that call that they believed that the non-BCBS payor claims data should have been located within a "BE.zip" file in their November 29, 2011 production.

15. During the telephone call, Compass Lexecon explained to Complaint Counsel that the "BE.zip" file was not contained on the FTC's November 29, 2011 production to RHS. Mr. Morrison requested that I inquire with counsel for OSF to see if the "BE.zip" file was included on the FTC's November 29, 2011 production to OSF.

16. At approximately 11:30 a.m., I asked counsel for OSF to check their November 29, 2011 production for that file. It is my understanding that counsel for OSF checked with their vendor, Applied Discovery, to determine whether the file was included in their copy of the FTC's November 29, 2011 production. I was informed by counsel for OSF at approximately 2:50 p.m. that their November 29, 2011 production from the FTC also did not include the "BE.zip" file. I communicated this fact to Mr. Morrison when I spoke with him at approximately 4:05 p.m. on February 21, 2011.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22, 2012 in Washington, D.C.



Nicole L. Castle

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EXHIBIT C

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV Division

Telephone: 202.326.3149
Email: jmorrison@ftc.gov

December 5, 2011

VIA FEDEX

Nicole L. Castle, Esq.
McDermott Will & Emery LLP
600 13th Street, N.W.
Washington, DC 20005

RE: FTC v. OSF Healthcare System and Rockford Health System, 3:11-cv-50344

Dear Nicole:

Please find enclosed three DVDs completing the Commission's obligations pursuant to Paragraph 1 of the court's December 1, 2011, order. Please note that the information from Blue Cross/Blue Shield, contained on the disks labeled "Production 1," is encrypted. I will email you the password for accessing that data. Under the stipulated interim protective order, all materials should be considered confidential and treated as such.

Please call me at (202) 326-3149 or Stephanie Reynolds at (202) 326-2177 if you have any questions.

Best Regards,

Jeremy P. Morrison

cc: Stephanie Reynolds, Esq.

EXHIBIT D

FILED

IN CAMERA

EXHIBIT E

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

CIGNA, Inc.
c/o Deanna Aldenberg, Esq.
600 Cottage Grove Rd., B6LPA
Hartford, CT 06152

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 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.

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
+1 202 756 8709

December 9, 2011

Aetna, Inc.
c/o Anthony Dennis, Esq.
Law & Regulatory Affairs, RW61
151 Farmington Avenue
Hartford, CT 06156

Re: Federal Trade Commission v. OSF Healthcare System and Rockford Health System, Case No. 3:11-cv-50344 (N.D. Ill.)

Dear Mr. Dennis:

Enclosed please find a subpoena to Aetna, Inc. ("Aetna") issued by Rockford Health System in the above-captioned case, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

An interim protective order has been stipulated and agreed to by the parties in the above-captioned case; however, that protective order has not yet been entered by the district court. A copy of the protective order that has been entered in the related administrative proceeding is enclosed. We will agree to treat the documents provided to us by Aetna as covered by the protective order in the administrative proceeding, pending entry of a protective order in the federal case.

If you have any questions, please let me know.

Sincerely,

Rachael V. Lewis

Enclosures

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

Federal Trade Commission *Plaintiff*	)	
v.	)	Civil Action No. 3:11-cv-50344
OSF Healthcare System and Rockford Health System *Defendant*	)	(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Aetna, Inc., c/o Anthony Dennis, Esq., Law & Regulatory Affairs RW61, 151 Farmington Avenue, Hartford, CT 06156

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Please see Schedule A

Place:	Date and Time:
McDermott Will & Emery LLP 600 13th Street, N.W. Washington, D.C. 20005	12/30/2011 9:00 am

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 12/9/11

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Rockford Health System, who issues or requests this subpoena, are:

Rachael V. Lewis
McDermott Will & Emery LLP
600 13th Street, N.W., Washington, D.C. 20005; 202-756-8709; rlewis@mwe.com

Civil Action No. 3:11-cv-50344

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

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 have the same definition as Rule 34 of the Federal Rules of Civil Procedure, and as such shall include electronic documents and data.

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

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

EXHIBIT F

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

Anthony J. Dennis
Law & Regulatory Affairs
151 Farmington Avenue, RW61
Hartford, CT 06156

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

Dear Tony:

During our January 6, 2012 call, I agreed that I would first review Aetna's 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 Aetna. Aetna did not produce any documents in response to Request Nos. 7-15, 20-21, and 23 from our review of Aetna's production of documents to the FTC. Please produce documents responsive to RHS' document requests or confirm that Aetna does not have responsive documents by January 20th. If Aetna is unable to produce certain documents by January 20th, please let us know what date Aetna intends to produce those particular documents.

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

I understand that Aetna produced documents responsive to No. 1 to the FTC in response to the FTC's CID.

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

I understand that Aetna produced documents responsive to No. 2 to the FTC in response to the FTC's CID.

Request No. 3 (Provider Directories)

I understand that Aetna 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)

I understand that Aetna produced documents responsive to No. 4 to the FTC in response to the FTC's CID.

Request No. 5 (Large Employers in Relevant Area)

I understand that Aetna produced documents responsive to No. 5 to the FTC in response to the FTC's CID.

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

I understand that Aetna 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 Aetna does not have responsive documents by January 20, 2012.

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

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

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

I understand that Aetna produced documents responsive to No. 16 to the FTC in response to the FTC's CID.

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

I understand that Aetna produced documents responsive to No. 17 to the FTC in response to the FTC's CID.

Request No. 18 (Negotiations with Providers)

I understand that Aetna produced documents responsive to No. 18 to the FTC in response to the FTC's CID.

Request No. 19 (Pricing Models)

I understand that Aetna produced documents responsive to No. 19 to the FTC in response to the FTC's CID.

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

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

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

I understand that Aetna produced documents responsive to No. 22 to the FTC in response to the FTC's CID.

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

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

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

I understand that Aetna 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 Aetna produced data responsive to No. 25 to the FTC in response to the FTC's CID.

Sincerely,

Rachael V. Lewis

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

Jason M. Kuzniar
Wilson, Elser, Moskowitz,
Edelman & Dicker LLP
55 West Monroe, Suite 3800
Chicago IL 60603

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

Dear Jason:

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

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

I understand that you needed to confer with Mr. Wade regarding communications Mr. Wade or other CIGNA personnel had with the Federal Trade Commission ("FTC") or the Illinois Attorney General's Office. Please produce documents responsive to this Request or confirm that CIGNA does not have responsive documents by January 20, 2012.

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

CIGNA does not maintain documents with CIGNA's financial performance in the Relevant Area in the ordinary course of business. After performing a reasonable search for documents responsive to Request No. 2, CIGNA stated that it does not have documents responsive to this Request, other than financial information on CIGNA's publicly available website.

Request No. 3 (Provider Directories)

CIGNA's provider directories are found on its publicly available website.

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

CIGNA's in-network providers are found on its publicly available website.

Request No. 5 (Large Employers in Relevant Area)

After performing a reasonable search for documents responsive to Request No. 5, CIGNA stated that it does not have documents responsive to this Request.

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

CIGNA indicated that it does not have documents responsive to Request No. 6 that are reasonably accessible back to 2001. CIGNA is still searching for documents responsive to Request No. 6 that show the number of covered lives for the last few years. Please produce documents responsive to this Request or confirm that CIGNA does not have responsive documents by January 20, 2012.

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

After performing a reasonable search for documents responsive to Request No. 7, CIGNA stated that it does not have documents responsive to this Request.

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

After performing a reasonable search for documents responsive to Request No. 8, CIGNA stated that it does not have documents responsive to this Request.

Request Nos. 9 and 10 (Choosing Physicians and Hospitals for Networks in Relevant Area)

After performing a reasonable search for documents responsive to Request Nos. 9 and 10, CIGNA stated that it does not have documents responsive to these Requests.

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

After performing a reasonable search for documents responsive to Request No. 11, CIGNA stated that it does not have documents responsive to this Request.

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

After performing a reasonable search for documents responsive to Request No. 12, CIGNA stated that it does not have documents responsive to this Request.

Request No. 13 (Impact of Reimbursement Rates)

After performing a reasonable search for documents responsive to Request No. 13, CIGNA stated that it does not have documents responsive to this Request.

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

After performing a reasonable search for documents responsive to Request No. 14, CIGNA stated that it does not have documents responsive to this Request.

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

After performing a reasonable search for documents responsive to Request No. 15, CIGNA stated that it does not have documents responsive to this Request.

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, CIGNA stated that it does not have documents responsive to this Request.

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

After performing a reasonable search for documents responsive to Request No. 17, CIGNA stated that it does not have documents responsive to this Request.

Request No. 18 (Negotiations with Providers)

CIGNA stated that Request No. 18 is overly burdensome. Please let us know when you are available to meet and confer to discuss narrowing the scope of this Request.

Request No. 19 (Pricing Models)

CIGNA indicated that it was still in the process of searching for documents responsive to Request No. 19. Please produce documents responsive to this Request or confirm that CIGNA does not have responsive documents by January 20, 2012.

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

CIGNA indicated that cost-to-charge information is available on public websites.

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

CIGNA indicated that the only documents responsive to Request No. 21 are CIGNA's health plans. After performing a reasonable search for documents responsive to Request No. 21, CIGNA stated that it does not have any other documents responsive to this Request.

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

After performing a reasonable search for documents responsive to Request No. 22, CIGNA stated that it does not have documents responsive to this Request.

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

After performing a reasonable search for documents responsive to Request No. 23, CIGNA stated that it does not have documents responsive to this Request.

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

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

Request No. 25 (Claims Data)

CIGNA indicated that it produced data responsive to Request No. 25 to the FTC in response to the FTC's Civil Investigative Demand ("CID").

Sincerely,

Rachael V. Lewis

EXHIBIT G

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)

Jeffrey W. Brennan
Attorney at Law
jbrennan@mwe.com
202-756-8127

February 7, 2012

VIA EMAIL

Kenneth W. Field, Esq.
Federal Trade Commission
Bureau of Competition
Mergers IV Division
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

Re: *FTC v. OSF Healthcare System & Rockford Health System*, 3:11-cv-50344 (N.D. Ill.)
In the Matter of OSF Healthcare System & Rockford Health System, Dkt. No. 9349

Dear Ken:

Last week (January 31, 2012), I advised you that after a diligent search, we were unable to locate within the FTC's production copies of the inpatient claims data ("claims data") obtained by Commission staff from managed care organizations ("MCOs") during the Commission's pre-litigation investigation of the OSF/RHS transaction ("investigation"). In response, later that day, without conceding any failure to previously produce, the FTC delivered to us a hard drive containing claims data produced by MCOs in response to FTC Civil Investigative Demands ("CIDs"). We have reviewed those materials and discovered that they are vastly more voluminous than anything the FTC provided to us previously, including in your productions on November 29, 2011 and December 5, 2011. Our conclusion is that you did not previously produce these voluminous data to us.

Several third-party MCOs whose claims data are contained in the hard drive you produced last week have advised us that they produced their claims data to the FTC prior to December 2011. For that reason, we do not understand why we did not receive these materials until last week. Accordingly, please inform us of the dates, as to each MCO, on which Commission staff received the CID responses that contained the payor data in question. In addition, if your position is that the FTC timely produced these claims data, then please specify their locations within your November 29 or December 5 productions. If, as we believe is the case, the FTC did not previously and timely produce the claims data, then explain why you did not produce the claims data until last week. As you know, pursuant to the scheduling order entered by Judge Kapala in this case, the FTC was obligated to produce all documents received from third parties during the investigation by December 5, 2011 [Docket No. 63].

In response to my raising this issue with you on January 31, 2012, the FTC delivered to us a copy not of the entire hard drive ostensibly produced in full on December 5, 2011, but rather only of the claims data portions of that hard drive. So that we can ensure that we receive all materials in addition to claims data that should have been included in the December 5 production but were not, please also provide us promptly with a copy of that entire hard drive with all of its requisite contents.

Sincerely,

Jeffrey W. Brennan

Jeffrey W. Brennan

DM_US 31674450-1.046498.0021

EXHIBIT H

From: Field, Kenneth [kfield@ftc.gov]
Sent: Tuesday, February 07, 2012 9:52 PM
To: Castle, Nicole
Cc: Brennan, Jeffrey
Subject: RE: FTC v. OSF Healthcare System and Rockford Health System

Jeff and Nicole,
Thank you for the letter. I understand from our conversation on January 31, 2011, and from your letter, that on or about that date Defendants became uncertain as to whether they had in their possession certain claims data files from three health plans. I further understand that Defendants believed they had the data in-hand up until that date but had not yet tried to locate it. Rather than trying to prove we had produced the materials before, or asking you to prove that we had not, I immediately offered to send you additional copies of ALL of the claims data we had in our files so that Defendants would not be prejudiced in any way. We immediately undertook significant efforts to extract and reproduce the data, despite having disproven prior claims by Defendants that we had failed to produce other data, and in fact delivered the complete collection of claims data to you on the same day you first informed us of a possible deficiency.

Throughout this process, both sides have tried in good faith to meet their production obligations but have at times needed to make corrective productions. What we all agree upon is that to the extent that there was any deficiency in our production of claims data to Defendants, it was cured on January 31, 2011, on or about the same date that Defendants first attempted to locate or use the data. Should you have any trouble accessing or understanding the data, or have further trouble locating specific files, we will continue to have our economists and IT professionals consult with yours to resolve any problems.

Thank you,

Ken Field
U.S. Federal Trade Commission
601 New Jersey Avenue, NW
Washington, DC 20001
Phone: 202.326.2868
Fax: 202.326.2286
Email: kfield@ftc.gov

From: Castle, Nicole [mailto:NCastle@mwe.com]
Sent: Tuesday, February 07, 2012 3:31 PM
To: Field, Kenneth
Cc: Brennan, Jeffrey
Subject: FTC v. OSF Healthcare System and Rockford Health System

Ken,

Please see the attached letter.

Thanks,

Nicole

Nicole L. Castle | Associate
McDermott Will & Emery LLP
600 Thirteenth Street, NW Washington, DC 20005
Direct: (202) 756-8158 | E-mail: ncastle@mwe.com

EXHIBIT I

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)

Jeffrey W. Brennan
Attorney at Law
jbrennan@mwe.com
202-756-8127

February 8, 2012

VIA EMAIL

Kenneth W. Field, Esq.
Federal Trade Commission
Bureau of Competition
Mergers IV Division
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

Re: *FTC v. OSF Healthcare System & Rockford Health System*, 3:11-cv-50344 (N.D. Ill.)
In the Matter of OSF Healthcare System & Rockford Health System, Dkt. No. 9349

Dear Ken:

This letter responds to your email from February 7, 2012. The statements in your email are not accurate. On December 6, 2011, we performed a diligent search for inpatient claims data ("claims data") from managed care organizations ("MCOs") in the FTC's productions dated November 29, December 5, and December 6. We were unable to locate claims data from MCOs including UnitedHealthcare, Aetna, and CIGNA. As a result of not being able to locate the claims data, we requested claims data in our subpoena requests to MCOs which were issued on December 9, 2011 and December 21, 2011. The MCOs later informed us that they had already produced the claims sought by our subpoena requests in response to the FTC's prior civil investigative demands ("CIDs"). Following discussions with the MCOs, we went back and reviewed the FTC's productions once again to determine whether the FTC's November and December productions contained the claims data. To date, we have been unable to locate the claims data.

It our belief that the claims data was not produced, as required, by the FTC before December 5, 2011. However, your email did not address my question as to whether the FTC timely produced the claims data, and if so, the location of the data within the FTC's productions. If the FTC did not previously and timely produce the claims data, please explain why the FTC did not produce the claims data until last week. Please promptly respond to our questions by tomorrow February 9, 2012, so that we can assess whether Respondents have a need to seek relief from Judge Chappell.

Sincerely,

Jeffrey W. Brennan

EXHIBIT J

From: Field, Kenneth [kfield@ftc.gov]
Sent: Thursday, February 09, 2012 6:25 PM
To: Brennan, Jeffrey
Cc: Castle, Nicole; Morrison, Jeremy P.; Ambrogi, Katherine A.
Subject: RE: FTC v. OSF Healthcare System and Rockford Health System

Jeff,
In your letters of February 7, 2012, and February 8, 2012, regarding inpatient claims data that you already have in your possession, you fail to describe any prejudice to Defendants from the allegedly deficient production and further fail to request any relief to address such prejudice, assuming it does exist.

By the terms of your own letters, Respondents discovered an alleged deficiency on December 6, 2011, but did not raise it with Complaint Counsel until January 31, 2012. Within hours of Respondents' first mention of the issue, Complaint Counsel cured any deficiency by delivering to Respondents new copies of all the inpatient claims data files. Even if Complaint Counsel's initial productions were deficient, Complaint Counsel cannot be held responsible for Respondents' decision to wait 8 weeks before raising an alleged deficiency discovered by Respondents on December 6, 2011. Moreover, it is beyond dispute that any such deficiency has now been cured by Complaint Counsel.

Although Complaint Counsel prefers to work through discovery issues cooperatively with Respondents to ensure that neither party is prejudiced by actual or alleged delays in producing required documents and information, it appears that you may prefer to involve Judge Chappell in such matters. If that is the case, we believe it would be appropriate to provide Judge Chappell with a more complete context of the discovery process in this matter, including the acknowledged instances of Respondents' recent late productions of documents to Plaintiff and similar deficiencies that unambiguously have prejudiced the Plaintiff in this action. Specifically, Plaintiff would seek relief from the Court to address, among other issues, Defendant RHS's production on January 20, 2012 of 80,000 new documents that Defendants already had certified in a sworn statement were produced on October 13, 2011. In that instance, as with the present instance, you appear to concede that Defendants were aware of the deficiency for many weeks, but never notified Plaintiff of the substantial and known deficiency of Respondents' document productions until after 9pm on Friday, January 20, 2012, well after the deadline for Plaintiff to submit its preliminary witness list in the administrative matter.

The inpatient claims data that is the subject of your recent letters necessarily contains sensitive health information for individual patients and access to it is highly restricted within the FTC. By policy, FTC staff attorneys instruct third parties to deliver such information directly to special custodians within the Commission who maintain the physical media under lock and key. The data itself is loaded only to a specially secured server, one not connected to the FTC network, and a single technician within the Commission is authorized to access the data or extract the data from that server. Complaint Counsel formally requested that all claims data be copied and produced to Defendants as part of our initial disclosures and we in good faith believed that it had been delivered to you on November 29, 2011. When you called me on January 31, 2012 and asked where certain files were located among the various drives and disks we had produced in November and December, I offered to send you new copies of the potentially missing data rather making you wait for us to locate the files in a months old production and then coordinate with your IT professionals and economists. Any deficiency in the original production was purely unintentional and Complaint Counsel responded diligently and immediately to resolve the concerns once raised.

We continue to believe that the parties can work together to resolve these, and other, outstanding discovery issues without the need to involve Judge Chappell. To that end, I remain available at your convenience to discuss these issues.

Thank you,

Ken Field
U.S. Federal Trade Commission
601 New Jersey Avenue, NW
Washington, DC 20001
Phone: 202.326.2868
Fax: 202.326.2286
Email: kfield@ftc.gov

From: Brennan, Jeffrey [mailto:Jbrennan@mwe.com]
Sent: Wednesday, February 08, 2012 2:10 PM
To: Field, Kenneth
Cc: Castle, Nicole
Subject: RE: FTC v. OSF Healthcare System and Rockford Health System

Ken --

Thank you for responding last night to my Feb. 7, 2012 letter. Further regarding the subject discussed in that correspondence, please see my attached letter to you, dated today.

Thanks.

Jeffrey W. Brennan
McDermott Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005
Direct: 202-756-8127
jbrennan@mwe.com

From: Field, Kenneth [mailto:kfield@ftc.gov]
Sent: Tuesday, February 07, 2012 9:52 PM
To: Castle, Nicole
Cc: Brennan, Jeffrey
Subject: RE: FTC v. OSF Healthcare System and Rockford Health System

Jeff and Nicole,
Thank you for the letter. I understand from our conversation on January 31, 2011, and from your letter, that on or about that date Defendants became uncertain as to whether they had in their possession certain claims data files from three health plans. I further understand that Defendants believed they had the data in-hand up until that date but had not yet tried to locate it. Rather than trying to prove we had produced the materials before, or asking you to prove that we had not, I immediately offered to send you additional copies of ALL of the claims data we had in our files so that Defendants would not be prejudiced in any way. We immediately undertook significant efforts to extract and reproduce the data, despite having disproven prior claims by Defendants that we had failed to produce other data, and in fact delivered the complete collection of claims data to you on the same day you first informed us of a possible deficiency.

Throughout this process, both sides have tried in good faith to meet their production obligations but have at times needed to make corrective productions. What we all agree upon is that to the extent that there was any deficiency in our production of claims data to Defendants, it was cured on January 31, 2011, on or about the same date that Defendants first attempted to locate or use the data. Should you have any trouble accessing or understanding the data, or have further trouble locating specific files, we will continue to have our economists and IT professionals consult with yours to resolve any problems.

Thank you,

Ken Field

U.S. Federal Trade Commission
601 New Jersey Avenue, NW
Washington, DC 20001
Phone: 202.326.2868
Fax: 202.326.2286
Email: kfield@ftc.gov

From: Castle, Nicole [mailto:NCastle@mwe.com]
Sent: Tuesday, February 07, 2012 3:31 PM
To: Field, Kenneth
Cc: Brennan, Jeffrey
Subject: FTC v. OSF Healthcare System and Rockford Health System

Ken,

Please see the attached letter.

Thanks,

Nicole

Nicole L. Castle | Associate
McDermott Will & Emery LLP
600 Thirteenth Street, NW Washington, DC 20005
Direct: (202) 756-8158 | E-mail: ncastle@mwe.com

EXHIBIT K

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)

Jeffrey W. Brennan
Attorney at Law
jbrennan@mwe.com
+1 202 756 8127

February 13, 2012

VIA E-MAIL

Kenneth Field, Esq.
Federal Trade Commission
Bureau of Competition
601 New Jersey Avenue, N.W.
Washington, D.C. 20560

Re: In the Matter of OSF Healthcare System and Rockford Health System

Dear Ken:

This responds to your February 9, 2012 e-mail, which I received on the 9th at 5:24 p.m.

You state in your first paragraph that my prior letters "fail to describe any prejudice to [respondents]" resulting from not having received the claims data until the evening of January 31, 2012. I am surprised you do not acknowledge the nature of the prejudice stemming from this delay. At issue are extraordinarily voluminous files of data that track specific patient claims for numerous commercial payors, which we were supposed to have received from complaint counsel at the latest by December 5, 2011. Dr. Capps and his team of supporting economists had access to the data by December 5 – and probably had access much earlier, during the Commission's pre-complaint investigation. It is impossible for respondents' expert to recover the lost time between December 5 and January 31.

Analyzing and drawing conclusions from patient-level payor claims data require very time-consuming, upfront, data "cleaning" and testing, for each payor's data. These are processes that our experts could not commence, of course, until we received the data. Moreover, each payor's claims data are uniquely structured and require separate processes. In total, the data received January 31 include more than 25 million inpatient claims records. Your oft-repeated statement that the deficiency is "cured" by virtue of our having received the missing volumes some eight weeks after they were due simply is not true. The time is lost, and it is substantial. Nothing in the discovery rules or Judge Chappell's schedule supports your characterization of this situation.

Your first paragraph refers to complaint counsel's production as "allegedly deficient" – implying that you do not believe our representation that we did not receive the data until January 31. If you do not believe us, then there is nothing for us to do but seek relief from Judge Chappell. On the other hand, you also argue that Respondents did not suffer undue prejudice "[e]ven if Complaint Counsel's initial productions were deficient" (paragraph two), and make it a point to

explain the complexities imposed by the FTC's restrictive policy regarding the handling of sensitive health information for individual patients (paragraph four). The latter implies that you recognize that the production indeed was deficient. Complaint counsel's position appears to be that although (i) you told us that the December 5 production was complete and (ii) we had no way to know this was not true until after the payors responded to our subpoenas much later in January, Respondents nonetheless were obliged on December 6 to alert you to your failure to produce data we had no reason to know you possessed in the first place. Such a position is untenable on its face.

Accordingly, tomorrow, please identify each third party from which complaint counsel received patient claims data, and, as to each third party, please also identify the date you received the data, the scope of the data you received, and when you will confirm that you provided the data to us.

With respect to your reference to "80,000 new documents" that RHS produced January 20, 2012, the declaration from Jon Marshall explains quite clearly that RHS did not know the reason for, or scope of, the problem at the time of the second request production – a problem that did not interfere with the staff's complaint recommendation or the Commission's commencement of litigation to block the transaction. To suggest that RHS acted inappropriately, or that complaint counsel incurred undue prejudice, does not square with the facts. I do not recall hearing before receiving your email that the document production affected your preliminary witness list. As you know, we accommodated your request for more time on the exhibit list when you asked for it. In any event, the production of those documents, and the circumstances under which they were produced and when, is not a defense to complaint counsel's failure timely to produce the payor claims data and unwillingness to acknowledge the undue prejudice that it has imposed on respondents.

Based on our discussions thus far and the parties' respective positions, it appears that we should meet and confer about this issue and potential remedies. Because I must travel tomorrow for matters that will cover the business day, I am not available until 7 pm EST tomorrow night (or later). I am also available this Wednesday, at any time ending by 10 am EST. Please advise if a time in either of those segments would work for you.

Thanks.

Sincerely,

Jeffrey W. Brennan

cc: David Marx, Esq.
Nicole Castle, Esq.

EXHIBIT L

From: Field, Kenneth [kfield@ftc.gov]
Sent: Wednesday, February 15, 2012 6:39 PM
To: Brennan, Jeffrey; Castle, Nicole
Cc: Reilly, Matthew J.; Perry, Jeffrey; Cunningham, Richard
Subject: Proposal Following Meet and Confer

Dear Jeff,

Thank you very much for your time last night.

As an initial matter, we are not certain of the scope of the health plan claims data that you believe you were not provided until January 31, 2012. Your February 8, 2012 letter indicates that you were "unable to locate claims data from MCOs including UnitedHealthcare, Aetna, and CIGNA" and is thus ambiguous regarding whether you believe you were not provided claims data from other health plans.

We have made extensive efforts to review our records regarding our productions to you on or before December 6, 2011 and have records indicating that we provided you with all claims data in our possession from BCBS-IL, Humana, ECOH on November 29, 2011. Our records also indicate that we provided you with inpatient claims data from United at that same time. Correspondingly, the health plan claims data that possessed at that time that may not have been provided to you is data from Aetna, Cigna, and Coventry, and outpatient claims data from United. I say "may not have been provided" in the previous sentence because I cannot determine definitely that we did not produce the data, merely that we do cannot document having done so. Based on your representation that you did not receive all claims data from health plans, we are willing to assume that you did not receive data that we cannot document providing to you.

As described in my February 9, 2012 email, Complaint Counsel's failure to produce some claims data from health plans was entirely unintentional. Because health plan claims data includes information on healthcare services provided to individuals, it is highly sensitive. The FTC has extensive policies in place to protect the data and attorneys do not have access to it. Pursuant to our security policies, Complaint Counsel formally requested that all claims data be copied and produced to Respondents as part of our initial disclosures and we in good faith believed that it had been delivered to you on November 29, 2011. Moreover, it is undisputed that we addressed the possibility that claims data from some health plans was missing from our productions literally the same day that you raised it.

We cannot be responsible for the fact that you did not raise the issue until January 31, 2012. If data was missing, as you describe, even a superficial review of our productions during late November and early December would have revealed that claims data was present for some health plans and not others. Asking why that was the case would have been the usual practice in a matter such as this one where a very voluminous amount of documents and data has been exchanged. Indeed, we have exchanged dozens of emails and letters relating to the scope of discovery. Moreover, you and your colleagues are very familiar with the FTC's discovery practices in hospital matters and are aware that we seek and have used claims data from health plans.

Also, you state in your February 8, 2012 letter that you learned from health plans that they had produced data to the FTC that was not included in our productions to you. Your letter includes no information regarding when you learned this from health plans, but is undisputed that you issued discovery requests to these health plans in early December, had discussions with them regarding discovery throughout December and January, and deposed their representatives during mid-January. Given the timing of these conversations, presumably you

learned about the claims data at issue before January 31, 2012 when you first raised this issue with us. Indeed, your letter refers to your efforts to re-review our productions after learning about claims data from health plans. We cannot be responsible for your choice to do that rather than simply raise the issue with us.

Thus, to the extent that Respondents are prejudiced by not having access to some of the claims data from health plans, that prejudice is due to your failure to raise this issue in a timely way despite having information that put you on notice that the initial productions to you may not have included some claims data from health plans.

Based on our conversation last night, I understand you to request that Complaint Counsel agree not use claims data from obtained from any health plan as relief from prejudice that you believe Respondents have suffered as a result of not having some portion of that data on or before December 6, 2011. The relief that you request is overbroad and dramatically disproportional to any legitimate prejudice that Respondents may have suffered.

First, the relief that you request would prevent the use of claims data from BCBS-IL, Humana, ECOH, and United that you have had since before December 6, 2012, the earliest data before which you were entitled to this information.

Second, as described above, any prejudice that you have suffered is due to your failure to raise this issue in a timely way.

Third, as proposed below, any prejudice you have suffered may be cured in a manner that does not involve precluding the court from having access to evidence.

Specifically, although we do not believe that any relief is appropriate due to Respondents' failure to raise this issue in a timely way, in the interest of resolving this issue without involving Judge Chappell, Complaint Counsel is willing to agree that Respondents' expert Dr. Noether may submit an additional report presenting analysis(es) using claims data obtained from health plans up until April 11, 2012, provided that Complaint Counsel has an opportunity to depose Dr. Noether for up to 2 additional hours on the additional report.

This proposal would give Dr. Noether and her team an extra four-plus weeks to work with that data, curing the prejudice that you describe in your February 13, 2012 letter of Dr. Noehter having insufficient time, or less time than Dr. Capps and his team, to work with this data that you describe in your February 13, 2012 letter.

As reflected in the 'Documents Considered' list appended to Dr. Capps' initial and reply affidavits in the preliminary injunction matter, Dr. Capps did not review or begin processing this data before January 11, 2012. In addition, Dr. Capps' team at Bates White had not performed any analysis of this data prior to January 11, 2012. Thus the amount of time Dr. Capps and his team will have to work with claims data from the health plan can be no more than 68 days (i.e., the time period between January 11, 2012 and March 19, 2012, the date on which his rebuttal report is due pursuant to Judge Chappell's scheduling order). Pursuant to our proposal, Dr. Noehter would have 71 days to work with this data (i.e., the time between January 31, 2012, the data on which there is no dispute that Respondents received all health plan claims data from Complaint Counsel, and April 11, 2012, the proposed date for Dr. Noether to submit an additional report).

We continue to believe that the parties can work together to resolve these, and any other, outstanding discovery issues without the need to involve Judge Chappell. To that end, I remain available at your convenience to discuss these issues.

Kind regards,
Ken

----- Original Message -----
From: Brennan, Jeffrey [mailto:Jbrennan@mwe.com]
Sent: Tuesday, February 14, 2012 07:45 PM
To: Field, Kenneth
Subject: Meet-Confer

Ken --

Are you available tomorrow morning at 9 am? If not, can you propose an alternative time? Could do tonight but not til about 10:30 pm ET. Thanks.

Jeff

Jeffrey W. Brennan
McDermott Will & Emery
202-756-8127

EXHIBIT M

Declaration of RAMANA VENKATA

1. I, Ramana Venkata, am the CEO of Applied Discovery, Inc.. Applied Discovery, Inc. ("ADI") was hired by Hinshaw & Culbertson LLP ("Hinshaw"), counsel for OSF Healthcare System, in connection with the *FTC v. OSF Healthcare System and Rockford Health System* matter.

2. Hinshaw provided to ADI certain productions that Hinshaw stated it received from the FTC. I have been advised by Hinshaw that among those productions, ADI received the original production sent to Hinshaw by the FTC on November 29, 2011 ("November production"). I have been advised by my production operations team that the production consisted of one hard drive.

3. On February 21, 2012, ADI was asked by Hinshaw to review the November Production and let them know whether it included a "BE.zip" folder. At my direction, my production operations team reviewed the November Production and determined that the drive included only a "BC.zip" file and did not contain a "BE.zip" file. ADI reported these findings to counsel at Hinshaw.

2/22/2012
Date

Ramana Venkata, Chief Executive Officer

EXHIBIT N

Declaration of Colin O'Laughlin, MPP

1. I am an analyst at Compass Lexecon in Washington, D.C. working under the supervision of Dr. Susan H. Manning. I have been asked by counsel at McDermott Will & Emery, LLP (MWE) to review original hard drives and CDs produced by the FTC that contain data regarding the *FTC v. OSF Healthcare System and Rockford Health System* matter.

2. In particular, I have received four FTC productions that were provided to me by MWE. The first FTC production contained a hard drive received by MWE on 11/29/2011 (November drive). The second FTC production contained three CDs received by MWE on 12/5/2011 (December 5 CDs). The third FTC production contained one CD received by MWE on 12/6/2011 (December 6 CD). The fourth FTC production contained a hard drive received by MWE on 1/31/2012 (January drive). I was asked by MWE to confirm if the November drive and December 5 CDs or December 6 CD contained the same volume/quality of payor claims data as contained on the January drive.

3. I compared the contents of the January drive to the November drive. The January drive contained 200 electronic files with approximately 225GB of data. All files on the drive were payor-specific payor claims data that covered the Midwest region. Data from Aetna, BCBS, Cigna, Coventry, ECOH, Humana and United were contained on this hard drive. The vast majority of these data were in a usable format.

4. The November drive contained none of the data files that were on the January drive. When I first received the drive its only contents were a single zipped folder named "BC.zip". That zipped folder contained over 450,000 files, the vast majority of which were images of contracts, agreements and other documents. After a thorough review of this hard drive, I identified approximately 300 files (~16GB) that contained some sort of payor claims data and were in a usable format. The payor claims data identified on the November drive were either hospital, county or state-specific, or aggregated claims from various payors. They contained far fewer variables and observations than the January datasets and were far less comprehensive. There were 6 files I was unable to open because they were corrupted or password protected. Due to the small size of these files, I determine that they were not replicates of the data produced on the January drive.

5. The December 5 CDs contained BCBS payor claims data that were an exact copy of the BCBS data received on the January drive. The December 5 CDs did not contain payor claims data for any payor other than BCBS. The December 6 CD consisted primarily of scanned document images. It did not contain any payor claims data.

6. Based on this analysis, I confirmed for MWE that the payor claims data that was contained on the January drive was not contained in either the November drive, the December 5 CDs, or the December 6 CD, with the exception of the BCBS payor claims data.

7. On February 21, 2012 at approximately 10:45 am I attended a phone call with FTC attorney, Jeremy Morrison and FTC litigation support specialist, Igor Velikson. I was accompanied by Nicole Castle of MWE and my colleague Thanh Bui. During the phone call the FTC requested several screen shots of the various drives and disks that I received. The FTC stated that they believed that the November drive should have contained both a "BC.zip" and a "BE.zip" folder. I told them over the phone and restate now that the November hard drive that I received only contained a "BC.zip" file. The original November hard drive that I received never contained a "BE.zip" file.

2/21/2012
Date

C. O'Laughlin
Colin O'Laughlin, MPP

EXHIBIT O

FILED
IN CAMERA

EXHIBIT P

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV Division
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

Stephanie Reynolds
Staff Attorney

Direct Dial
202-326-2177

December 19, 2011

VIA COURIER

Nicole Castle, Esq.
McDermott Will & Emery LLP
600 13th Street, N.W.
Washington, D.C. 20005

Re: Dkt. 9349, In the Matter of OSF Healthcare System and Rockford Health System

Dear Nicole:

The enclosed materials, together with the materials previously produced in connection with the Federal District Court matter, constitute Complaint Counsel's full and complete initial disclosures pursuant to Federal Trade Commission Rule 3.31.

Enclosed are one compact disc containing final production materials and another compact disc containing: (1) a log providing the bates ranges of the produced materials; (2) a list providing the name, address, and phone number of each individual believed to have discoverable information; and (3) a log of materials withheld on the basis of privilege.

Today's production resolves the issues raised in your December 12, 2011 letter and satisfies any remaining initial disclosure obligation under FRCP 26.

If you have any questions please contact me at sreynolds@ftc.gov or 202-326-2177. Thank you.

Regards,

Stephanie L. Reynolds

Stephanie L. Reynolds

Enclosures