

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

FEDERAL TRADE COMMISSION
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DOCUMENT PROCESSING

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In the matter of)
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)
Evanston Northwestern Healthcare)
Corporation,)
a corporation, and)
)
ENH Medical Group, Inc.,)
a corporation.)
_____)

Docket No. 9315

**RESPONDENTS' RESPONSE TO UNICARE HEALTH PLANS
OF THE MIDWEST, INC.'S MOTION FOR EXTENSION OF TIME
TO FILE MOTION TO LIMIT SUBPOENA DUCES TECUM**

Pursuant to the Federal Trade Commission's Rules of Practice ("Rules"), 16 C.F.R. § 3.22(c), and the Court's Order dated May 10, 2004, Respondents Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc. hereby respond to the Motion of Unicare Health Plans of the Midwest, Inc. ("Unicare") for Extension of Time to File Motion to Limit Subpoena Duces Tecum.

Respondents are attempting to work with counsel for Unicare to expedite its production of documents responsive to the subpoena duces tecum ("Subpoena") served in this action. Toward this end, Respondents advised Unicare in an exchange of voice mails that they would not oppose a reasonable request for additional time to make an appropriate motion. Respondents did not, however, advise Unicare that they had "no objection" to a "thirty (30) day extension of time for Unicare to file its motion to quash or limit the Subpoena and to comply with Section 3.38A" as alleged in paragraph 4 of Unicare's motion. Subsequent to the filing of Unicare's motion, Respondents' counsel spoke with Unicare's counsel to resolve the apparent miscommunication.

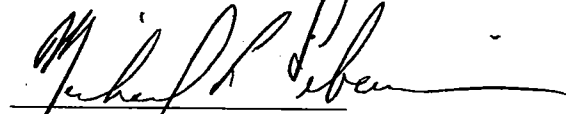
It is Respondents understanding that any extension that the Court may afford Unicare to file its motion would not impact Unicare's commitment to make a rolling production of documents responsive to the Subpoena as quickly as possible. As a result, although Respondents would agree to a reasonable extension and do not oppose Unicare's request for some additional time, we suggest a seven (7) day extension would be sufficient. Respondents will continue to work with Unicare to resolve any questions or concerns regarding the breadth of the Subpoena.

Respondents have been diligently working with all third parties subpoenaed in this matter in an effort to resolve discovery disputes without involving the Court in time-consuming motion practice. Respondents recognize the tight discovery timeframe set by the Court's Scheduling Order and thus are encouraging the rolling production of third party materials as soon as possible. Information in the possession of these third parties is necessary for Respondents to prepare their defense to a complaint served on them only three months ago in a case Complaint Counsel has been developing – with information from many of these third parties – for literally years. Although several of the third parties previously produced documents to Complaint Counsel, Respondents have every right to require these third parties to supplement and update such productions. Respondents' third party discovery practice is consistent with the fact that Complaint Counsel served on Respondents at the outset of this case comprehensive requests for production, pursuant to which Respondents have produced 61 boxes of documents (almost double the amount of materials produced by Respondents during the underlying investigation).

Finally, Respondents take this opportunity to set the record straight concerning the assertion in Complaint Counsel's Response to Third Party Humana Inc.'s Motion for Leave that "Respondents . . . delayed commencing discovery until two months after the filing of the Complaint." Complaint Counsel did not produce their investigation file, including 200 boxes of

documents and numerous cd-roms containing data as well as 25 deposition transcripts, until March 25, 2004 – 1½ months after the complaint was filed. That Respondents took a few weeks to preliminarily review these thousands of documents to determine what additional materials to request from third-parties, including what aspects of prior productions needed to be updated, is hardly surprising and does not constitute undue delay. This is especially true given that, at the same time, Respondents were gathering, reviewing and producing in response to Complaint Counsel’s requests for production 61 additional boxes of documents that Complaint Counsel could, and should, have sought during the underlying investigation when the parties were under no tight discovery deadlines. To be clear, Respondents are making extraordinary efforts to meet the July 12, 2004, fact discovery deadline set by the Scheduling Order.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2004, a copy of the foregoing Respondents' Response To Unicare Health Plans Of The Midwest, Inc.'s Motion For Extension Of Time To File Motion To Limit Subpoena Duces Tecum was served by email and first class mail, postage prepaid, on:

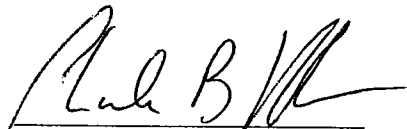
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