UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the matter of	)	
Evanston Northwestern Healthcare Corp., a corporation, and	)	Docket No. 9315
ENH Medical Group, Inc., a corporation.	)	PUBLIC

ABBOTT LABORATORIES' AND TOWERS PERRIN'S JOINT MOTION TO QUASH OR LIMIT RESPONDENTS' SUBPOENAS *DUCES TECUM* AND SUBPOENA *AD TESTIFICANDUM*

Non-parties Abbott Laboratories ("Abbott"), and Towers Perrin, ("Towers") (collectively, "Movants"), by and through their attorneys, Crisham & Kubes, Ltd., pursuant to Section 3.34(c) of the Federal Trade Commission's Rules of Practice, hereby move to quash or limit Respondents' Subpoenas *Duces Tecum* and Subpoena *Ad Testificandum*. In support thereof, Movants states as follows:

BACKGROUND

On July 22, 2004, Respondents, Evanston Northwestern Healthcare Corp. and ENH Medical Group, Inc., served an overly broad subpoenas *duces tecum* on Abbott, seeking thousands of documents covering more than a seven year time period. (Copy attached hereto as Exhibit A.[1]) Respondents followed that up with a subpoena *ad testificandum* for the deposition of Lois Lourie, an employee of Abbott. (Copy attached hereto as Exhibit B.) As discussed below, these subpoenas should be quashed or limited.

[1]Respondents also served an identical subpoena on Towers.

Movants objected to the breadth of the subpoenas and, pursuant to FTC Rule of Practice 3.22(f), counsel for Movants had several conferences with counsel for Respondents, both in person and by telephone, in an effort to reach a consensus on a more limited scope of the subpoenas. (See Statement of Thomas Crisham, attached hereto as Exhibit C.) In connection therewith, the parties agreed to an extension of time for Movants to file a motion to quash or limit the subpoena, in an effort to possibly avoid the need for Movants to file a motion while the parties continued to negotiate the scope of the subpoenas. (Ex. C; See also, correspondence between Movants and Respondents, attached hereto as Group Exhibit D.)[2]

Ultimately, the parties successfully reached an agreement as to some of the matters in controversy, with Respondents agreeing to restrict or eliminate some of the categories of documents requested by the subpoena. Unfortunately, however, the parties have been unable to reach an accord as to some of the other requested documents, as well as the need for Ms. Lourie's deposition, thus necessitating this motion.

ARGUMENT

As discussed below, the subpoenas propounded by Respondents are nothing more than a fishing expedition in an effort to obtain from third parties, documents which Respondents either possess (or could generate) themselves, or which it can obtain from more direct sources. Documents relating to the cost of healthcare, the effect of the merger, and Respondents' relative negotiating strength with insurance companies can and should be obtained from those parties that directly

[2] That agreed-upon extension was of an indefinite time period, but terminable upon ten days notice by Respondents. Respondents served notice of termination of the extension on August 27, 2004, (Ex. D), making Movants's motion due on September 6, 2004. Accordingly, Movants have brought this motion in a timely manner.

possess that information. Movants, as non-parties who are not involved in setting or negotiating the costs for healthcare, should not be compelled to cull through their records to produce their own research on these topics. Accordingly, the subpoenas to Movants should be quashed.

I. The Subpoenas *Duces Tecum*, Even as Narrowed, Are Still Overly Broad, Unduly Burdensome and Seek Information That Is Available from Other Sources.

The following requests are still in dispute between the parties:

3. All documents, reports, studies, surveys, or audits referring or relating in any manner to the ENH/Highland Park transaction.

4. All documents prepared by or for [Movants] assessing, analyzing, reporting, or comparing prices for healthcare services at ENH or Highland Park and any other health care facility.

6. All documents which describe, compare, or evaluate the health care services, the quality of services, the cost of services, the staff, or the facilities of hospitals in the Geographic Area, including, but not limited to, ENH.

8. All documents, information, materials and statistics used, cited, or relied upon in the preparation or drafting of the "Health Care Cost Drill Down" reports by Towers Perrin dated in November and December, 2001 and distributed to Abbott Laboratories.

10. All documents relating to competition in the provision of any health care service in the Geographic Area, including, but not limited to, market studies, forecasts, and surveys, and all other documents relating to:

. . . .

(b) the quality of care provided by any hospital;
(c) the relative strength or weakness of hospitals providing any health care service;

. . .

(e) hospital preferences or perceptions of consumers, patients, or physicians (including but not limited to, patient satisfaction surveys);
(f) the preferences of third party payors for hospitals;
(g) any comparisons of any hospital's contracted hospital rates with another hospital's rates.

12. All documents describing or evaluating the ability to shift patients from one healthcare facility to another, or to encourage or discourage patients to use one hospital more than another.

(Ex. A.) As discussed below, these requests, especially when directed to non-parties, are overly broad, unduly burdensome, seek irrelevant information or seek what is in essence free expert discovery from Movants regarding healthcare costs. These requests should be quashed.

A. The requests are overly broad and seek irrelevant information.

Discovery sought in a proceeding before the Commission must be "reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." 16 C.F.R. § 3.31(c)(1); *FTC v. Anderson*, 631 F.2d 741, 745 (D.C. Cir. 1979). The question, therefore, is whether the subpoena seeks information that is reasonably expected to be "generally relevant to the issues raised by the pleadings." *In re Rambus Inc.*, No. 9302, 2002 FTC LEXIS 90, *4-5 (FTC Nov. 18, 2002), quoting *In re Kaiser Aluminum & Chem. Corp.*, No. 9080, 1976 FTC LEXIS 68 at *4 (FTC Nov. 12, 1976). Thus, the "relevancy of the information sought is determined by laying the subpoena along side" the pleadings. *Id.* at *5.

The complaint in this matter seeks to void the merger between ENH and Highland Park as being anticompetitive with respect to the price of healthcare services in Cook and Lake Counties in Illinois. (Copy attached as Exhibit E.) As noted below, when the subpoenas *duces tecum* are placed along side the pleadings, it is clear that Respondents' subpoenas are not reasonably calculated to lead to the discovery of information that is relevant to the proceedings. *Id.*

1. Objections as to geographic scope

In cases before the Commission, discovery may be limited where the information sought is not relevant to the allegations of the complaint and therefore is overly broad in either subject matter

or geographic scope. *See, e.g., In re North Texas Specialty Physicians*, No. 9312, 2004 FTC LEXIS 19 at *13 (FTC Feb. 4, 2004) (limiting documents to the geographic scope involved in the complaint). Respondents' subpoenas seek information for a geographic area that includes counties that are not implicated in the Commission's complaint. Respondents seek information relating to Cook, Lake, Kane, Kendall and McHenry counties in Illinois. (Ex. A, p. 5, Definition F.) The Complaint, however, references only Lake and Cook counties. Accordingly, the price of healthcare in other counties is not relevant and the subpoenas should be limited to Lake and Cook counties only.

2. Objections as to time period

Respondents originally sought information for the time period of January 1, 1997 to the present. (Ex. A, p. 1, Instruction A.) Respondents since have agreed to limit the time period to January 1, 1999 to the present. This, however, is still an overly broad time period. The merger at issue was completed in January, 2000. Therefore, information relating to the cost of health care in the years after the merger is not relevant. Accordingly, the subpoenas should be limited to the time period of January 1, 1999 until the consummation of the merger in January, 2000.

B. It would be unduly burdensome to require compliance by these non-parties.

Importantly, Movants had no involvement with the merger at issue. Instead, Movants are merely two of many targets of subpoenas *duces tecum* issued by Respondents who are apparently trolling for any healthcare cost comparison data that may have been generated or commissioned by third parties. Even if Respondents could demonstrate how the requested information is relevant, Respondents cannot meet their burden of proving a substantial need for this information which would justify compelling non-parties to comply with these burdensome requests.

FTC Rule of Practice 3.31 prohibits discovery requests where "the burden and expense of the proposed discovery outweigh its likely benefit." 16 C.F.R. § 3.31(c)(1). "Even where relevance is established, the right of the requesting party to obtain documents is weighed against the prejudice that might be caused to non-parties in the event that production were ordered." *In re Schering Plough Corp.*, No. 9297, 2001 FTC LEXIS 199 (FTC Sept. 7, 2001). Here, Respondents cannot meet that burden.

When it comes to subpoenas issued to non-parties, federal courts have traditionally been particularly sensitive to unduly burdensome discovery requests served on non-parties. *See, e.g., Echostar Comm. Corp. v. News Corp.*, 180 F.R.D. 391, 394 (D. Col. 1998) citing *American Standard, Inc. v. Pfizer, Inc.*, 828 F.2d 734, 738 (Fed. Cir. 1987) ("[T]he status of a person or entity as a non-party is a factor which weighs against disclosure."). In fact, "[t]he standards for nonparty discovery . . . require a stronger showing of relevance than for simple party discovery." *Lexalt v. McClatchy*, 116 F.R.D. 455, 458 (D. Nev. 1986). *See also, Bio-Vita, Ltd. v. Biopure Corp.*, 138 F.R.D. 13, 17 (D. Mass. 1991) (usual relevance standard does not apply to non-parties). In fact, courts attach greater significance to the implications of sweeping discovery requests on non-parties. *See, e.g., Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 48-49 (S.D.N.Y. 1996) (non-party witness entitled to consideration regarding expense and inconvenience necessary to respond to subpoena).

Accordingly, with respect to subpoenas issued to non-parties, the requesting party must demonstrate a "substantial need" for the requested discovery. *R & D Business Systems v. Xerox Corp.*, 152 F.R.D. 195, 196 (D. Colo. 1993). Thus, Respondents in this case must demonstrate a

substantial need for the documents that they seek from Movants to justify requiring Movants to expend significant time and expense of responding to the subpoenas. They have not done so.

If forced to comply with the subpoenas as drafted, Movants would be prejudiced because they would have to expend great amounts of time searching through tens of thousands of documents generated over a five year period for the hundreds that may be responsive to Respondents requests. In addition, if the subpoenas are not narrowed, some of these files may have to be retrieved from off-site locations and therefore significant time and expense would be necessary to search for and produce the requested documents. Without a showing of substantial need, non-party Movants should not be forced to incur these substantial burdens.

C. The requested information is available from other sources and Respondents cannot demonstrate a substantial need for the information.

Pursuant to FTC Rule of Practice 3.31(c), discovery "shall be limited" if the "discovery sought . . . is obtainable from some other source that is more convenient, less burdensome or less expensive." 16 C.F.R. § 3.31(c). *See also In re James Carpets, Inc.*, 81 FTC 1062 (ALJ should have considered whether material could have been obtained elsewhere). Similarly, the United States District Courts have routinely invoked Federal Rule of Civil Procedure 45(c)(3)(B) to quash similar subpoenas to non-parties, absent a showing of substantial need for the information. *See, e.g.*, *Statutory Committee of Unsecured Creditors v. Motorola, Inc.*, 218 F.R.D. 325, 326-27 (D.D.C. 2003) (finding that subpoena issuer failed to meet threshold showing of "substantial need of the testimony or material that cannot otherwise be met without undue hardship" where subpoena issuer could have commissioned its own similar study at its own expense); *Act, Inc. v. Sylvan Learning Systems, Inc.*, No. 99-63, 1999 U.S. Dist. LEXIS 7055 (E.D. Penn. May 14, 1999) (party in antitrust

case failed to show substantial need for non-party's market information, where that information could be obtained from its own research); *Schering Corp. v. Amgen, Inc.*, No. 98-98, 1998 U.S. Dist. LEXIS 13452 (D.C. Del. Aug. 4, 1998) (noting that subpoena issuer had not met substantial need threshold where it could have retained its own expert to provide the same information).

Respondents are, in essence, seeking free expert discovery from Movants by demanding any reports or analyses of healthcare costs or providers that Abbott may have commissioned or either of Movants prepared. Respondents can generate or commission the same (if not better) reports, analyses, and reviews of healthcare costs that Movants spent their own time and expense in compiling. Respondents have yet to show a substantial need for the information in Movants' files and accordingly the subpoenas should be quashed or limited.

Any information that Movants may possess regarding the cost of healthcare is not unique to Movants. That same information is available from a myriad of other sources, not to mention from Respondents themselves. Respondents have not demonstrated, as they must under Rule 3.31(c), that they cannot obtain this information directly from other sources, such as other hospitals, providers and insurance companies. Moreover, Respondents could easily hire their own industry consultants to obtain and review such information, rather than taking free advantage of the work already performed by these non-parties. Under these circumstances, the subpoenas should be quashed.

II. The Subpoena *Ad Testificandum* Is Unnecessary And Should Be Quashed.

In addition to the comprehensive subpoenas *duces tecum* served on Movants, Respondents also seek to take the deposition of Ms. Lois Lourie, an employee of Abbott. In light of the documents that Respondents will be receiving from Abbott, Abbott fails to see why Respondents need to take a deposition of Ms. Lourie as well. Any other testimony she may provide would only

be cumulative of the evidence already contained in the documents being produced by Abbott. On the other hand, requiring Ms. Lourie to attend a deposition would be burdensome to her and Abbott by requiring her to take time away from her activities at the office to prepare for and attend a deposition. Therefore, because Respondents cannot articulate a basis for the need to take Ms. Lourie's deposition, the subpoena *ad testificandum* should be quashed.

CONCLUSION

The burden on Movants to comply with Respondents' overly broad subpoena is quite substantial. Moreover, the documents sought are either irrelevant, or obtainable from other sources. Respondents cannot demonstrate the necessary substantial need for these documents which would justify requiring a non-parties such as Abbott and Towers to expend significant time and resources to gather, review, copy and produce the documents. Accordingly, Movants requests that the subpoenas *duces tecum* be quashed or limited, and that the subpoena *ad testificandum* be quashed as well. Alternatively, Movants requests that the Commission grant it additional time until September 30, 2004, to assemble the requested documents and comply with the subpoenas.

Respectfully submitted,

ABBOTT LABORATORIES and TOWERS PERRIN

By: One of their attorneys

Thomas M. Crisham
David J. Sullivan
CRISHAM & KUBES, LTD.
30 N. LaSalle Street, Suite 2800
Chicago, IL 60602
312-327-2500

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2004, a copy of the above and foregoing **JOINT MOTION TO QUASH OR LIMIT RESPONDENTS' SUBPOENA *DUCES TECUM* AND SUBPOENA *AD TESTIFICANDUM*** was served via U.S. Mail on:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue N.W. (H1-106)
Washington, DC 20580

Philip M. Eisenstat, Esq.
Federal Trade Commission
601 New Jersey Avenue N.W.
Room NJ-5235
Washington, DC 20580

Thomas H. Brock, Esq.
Federal Trade Commission
600 Pennsylvania Avenue N.W. (H-374)
Washington, DC 20580

Chu Pak, Esq.
Assistant Director Mergers IV
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580

and served on counsel for the Respondents via U.S. Mail to:

Michael L. Sibarium, Esq.
Winston & Strawn, LLP
1400 L St., N.W.
Washington, DC 20005

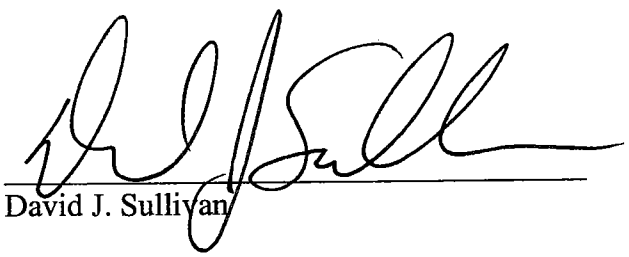
Duane M. Kelley, Esq.
Winston & Strawn, LLP
35 West Wacker Drive
Chicago, Illinois 60601

Charles B. Klein
Winston & Strawn, LLP
1400 L St., N.W.
Washington, DC 20005

and served on counsel for the Respondent via messenger delivery to:

Michael T. Hannafan
Michael T. Hannafan & Associates, Ltd.
One East Wacker Drive
Suite 1208
Chicago, Illinois 60601

9/3/2004
Date



David J. Sullivan

Tab A

Hand Delivered to Cindy Bennett 7/22/04

SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

J. McGuire
L. Parker

1. TO	2. FROM
Custodian of Records Abbott Laboratories 100 Abbott Park Road Abbott Park, IL 60064-6400	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 - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION	4. MATERIAL WILL BE PRODUCED TO
Michael T. Hannafan & Associates, Ltd. One East Wacker Drive, Suite 1208 Chicago, IL 60601 (312) 527-0055	Nicholas A. Pavich, Esq. Michael T. Hannafan & Associates, Ltd.
	5. DATE AND TIME OF PRODUCTION OR INSPECTION August 20,2004 at 10:00 a.m.

6. SUBJECT OF PROCEEDING

In the Matter of Evanston Northwestern Healthcare Corporation, et al., Docket No. 9315

ABBOTT LABORATORIES
JUL 2 2 2004
LEGAL DIVISION

7. MATERIAL TO BE PRODUCED

Please See Attached Schedule A; Please See Attached Protective Order Entered In This Proceeding On March 24, 2004.

8. ADMINISTRATIVE LAW JUDGE	9. COUNSEL REQUESTING SUBPOENA
The Honorable Stephen J. McGuire Federal Trade Commission Washington, D.C. 20580	Michael T. Hannafan, Esq. Michael T. Hannafan & Associates, Ltd. One East Wacker Drive, Suite 1208 Chicago, IL 60601 (312) 527-0055

DATE ISSUED	SECRETARY'S SIGNATURE
JUL 16 2004	Donald S. Clark

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 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 with the Secretary of the Federal Trade 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.

FTC SUBPOENA

SCHEDULE A

INSTRUCTIONS

A. Unless otherwise specified, the time period addressed by this Schedule is January 1, 1997 through the present day. All references to year refer to calendar year.

B. If you have produced documents responsive to this Schedule in the course of the pre-complaint investigation of this matter, FTC File No. 0110234, those documents need not be produced again so long as such documents are identified by Bates range or comparable means in your response to this subpoena.

C. If any document requested is withheld pursuant to a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this Subpoena. In addition, you must submit, together with the claim of privilege, a log stating the following information for each data item withheld: (a) the specifications and sub-specifications for which the data is responsive; (b) the type or specific subject matter, the date of the data; (c) the names, addresses, positions, and organizations of all authors and recipients of the data; and (d) the specific grounds for claiming that the data is privileged with sufficient particularity and detail to permit the Administrative Law Judge to adjudicate the validity of such claim. If only some portion of any responsive information or data is privileged, all non-privileged portions of the information or data must be submitted.

D. With respect to specific documents produced in response to this Schedule, each document provided shall be complete and, unless privileged, unredacted and submitted as found in your files (e.g., documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in such form). You may submit photocopies (with color

copies where necessary to interpret the document) in lieu of original documents, provided that such copies are accompanied by an affidavit of an officer of Your Company stating that the copies are true, correct and complete copies of the original documents.

E. Each document produced by You in response to this Schedule should be marked with corporate identification and consecutive document control numbers. In addition, all documents produced in response to the Schedule shall be organized and labeled to correspond with each request or any part thereof.

F. In the event that any document referred to or identified has been destroyed or otherwise disposed of, that document is to be identified by (i) the author; (ii) the addressee, including persons to whom blind copies were addressed; (iii) the date; (iv) the subject matter; (v) the number of pages, attachments, or appendices; (vi) all persons to whom the document was distributed, shown, or explained; (vii) a description of the circumstances under which the document was destroyed or disposed of; (viii) the date of destruction or other disposition; (ix) the person who destroyed or disposed of the document; (x) the person who directed or authorized such destruction or disposition.

G. This Schedule is continuing and any document obtained subsequent to production that would have been produced had it been available or its existence been known at the time of production shall be produced forthwith.

H. This Schedule is intended to include all requested documents in the possession, custody or control of Your Company and all individuals purporting to act on its behalf, wherever located and by whomever prepared.

I. Reference to an individual shall also refer to that individual's predecessors and successors in interest, direct or indirect, and his or her heirs, employees, assigns, trusts, estates, attorneys and agents.

J. Reference to an entity shall also refer to that entity's companies, corporations, divisions, departments, associations, partnerships, joint ventures, trusts, subsidiaries, affiliates, and any other forms of business or commercial organization or arrangement, predecessors and successors in interest, direct or indirect, and its past, present, and future partners, associates, officers, directors, shareholders, principals, employees, representatives, assigns, advisors, attorneys and agents.

K. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The terms "each" and "all" are to be constructed as a request that every document or piece of information be identified separately.

L. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive.

M. The singular includes the plural, and vice versa.

N. The production of documents pursuant to this subpoena is subject to the terms and conditions of the attached Protective Order.

O. Any questions you have relating to the scope or meaning of anything in this Schedule or any suggestions for possible modifications thereto should be directed to Michael T. Hannafan or Nicholas A. Pavich at 312/527-0055. A response to this Subpoena shall be addressed to the attention of Michael T. Hannafan and Nicholas A. Pavich, Michael T. Hannafan & Associates, Ltd., One East Wacker Drive, Suite 1208, Chicago, Illinois, 60601.

DEFINITIONS

A. The terms "constitute," "contain," "discuss," "analyze," or "relate to" mean constituting, reflecting, respecting, regarding, concerning, pertaining to, referring to, relating to, stating, describing, recording, noting, embodying, memorializing, containing, mentioning, studying, assessing, analyzing, or discussing.

B. The term "document" is used herein in the broadest sense permissible under Federal Trade Commission Rule of Practice 3.34(b) and includes, without limitation, writings, drawings, graphs, charts, handwritten notes, film, photographs, audio and video recordings and any such representations stored on a computer, a computer disk, CD-ROM, magnetic or electronic tape, or any other means of electronic storage, and other compilations from which information can be obtained in machine-readable form (translated, if necessary, into reasonably usable form by the person subject to the Subpoena). The term "documents" includes electronic mail and drafts of documents, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in your possession, custody, or control.

C. The term "ENH" means Evanston Northwestern Healthcare Corporation (including Evanston Hospital, Glenbrook Hospital, and Highland Park Hospital), its parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate" and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between ENH and any other person.

D. The term "ENH/Highland Park transaction" means the merger between ENH and Highland Park Hospital which was consummated in January 2000.

E. The term "ENH Medical Group" means ENH Medical Group, Inc., its predecessors and affiliates.

F. The term "Geographic Area" means Lake, Cook, Kane, Kendall, and McHenry counties in Illinois.

G. The term "health care facility" means a hospital, health maintenance organization facility, ambulatory care center, first aid or other clinic, urgent care center, free-standing emergency care center, imaging center, ambulatory surgery center and all other entities that provide health care services.

H. The term "health care service" means a medical or surgical service or procedure performed at a health care facility.

I. The term "hospital" is a type of health care facility that provides, among other services, inpatient health care services.

J. The term "Highland Park" means Highland Park Hospital, its parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing.

K. The term "Highland Park IPA" means the Highland Park Independent Physician Association.

L. The term "third party payor" means a person other than a natural person that pays any health care expenses of any other person, and all of its directors, officers, employees, agents, and representatives. Third party payor includes, but is not limited to Blue Cross and Blue Shield plans, commercial insurance companies, health maintenance organizations, preferred provider organizations, competitive medical plans, union trust funds, multiple employer trusts, corporate or governmental self-insured health benefit plans, Medicare, Medicaid, or CHAMPUS.

M. The terms "You" and "Your Company" means Abbott Laboratories and all of its directors, officers, agents, employees, representatives, subsidiaries, affiliates, divisions, departments, partnerships, joint ventures, parents and predecessors.

DOCUMENTS TO BE PRODUCED

1. All documents, reports, studies, surveys, or audits analyzing health care costs, health care expenses, health insurance premiums, and related documents.

2. All documents forecasting, assessing, or measuring increases or decreases in health care costs or expenses in the Geographic Area.

3. All documents, reports, studies, surveys, or audits referring or relating in any manner to the ENH/Highland Park transaction.

4. All documents prepared by or for Your Company assessing, analyzing, reporting, or comparing prices for healthcare services at ENH or Highland Park and any other health care facility.

5. All documents, recommendations, correspondence, advice, consultations, or reports prepared in whole or in part by Your Company addressed to your former, existing, or potential customers which address ENH and/or Highland Park.

6. All documents which describe, compare, or evaluate the health care services, the quality of services, the cost of services, the staff, or the facilities of hospitals in the Geographic Area including, but not limited to, ENH.

7. All documents relating to competition among third party payors relating to health care facilities in the Geographic Area, including but not limited to the desirability or necessity of entering into contracts with particular health care facilities in the Geographic Area, including ENH.

8. All documents, information, materials and statistics used, cited, or relied upon in the preparation or drafting of the "Health Care Cost Drill Down" reports by Towers Perrin dated in November and December 2001 and distributed to Abbott Laboratories.

9. All contracts between Your Company and any third party payor, including all amendments, appendices or related documents reflecting any contract terms.

10. All documents relating to competition in the provision of any health care service in the Geographic Area, including, but not limited to, market studies, forecasts, and surveys, and all other documents relating to:

(a) the market share or competitive position of any hospital or third party payor;

(b) the quality of care provided by any hospital;

(c) the relative strength or weakness of hospitals providing any health care service;

(d) supply and demand conditions;

(e) hospital preferences or perceptions of consumers, patients, or physicians (including, but not limited to, patient satisfaction surveys);

(f) the preferences of third party payors for hospitals;

(g) any comparisons of any hospital's contracted hospital rates with another hospital's rates; or

(h) any comparisons of any hospital's costs per patient discharge with those of any other hospital.

11. All documents referring or relating in any manner to the criteria or factors used by You in selecting which third party payors to contract within in the Geographic Area, or which apply those criteria.

12. All documents describing or evaluating the ability to shift patients from one healthcare facility to another, or to encourage or discourage patients to use one hospital more than another.

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

In the matter of EVANSTON NORTHWESTERN HEALTHCARE CORPORATION, and ENH MEDICAL GROUP, INC., . Respondents.	)	Docket No. 9315

PROTECTIVE ORDER
GOVERNING DISCOVERY MATERIAL

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.

DEFINITIONS

1. "Evanston Northwestern Healthcare Corporation" means Evanston Northwestern Healthcare Corporation, a corporation organized and existing under the laws of the State of

Illinois, with its principal place of business at 1301 Central Street, Evanston, Illinois 60201, and its predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures.

2. "Evanston Northwestern Medical Group" means Evanston Northwestern Medical Group, a corporation organized and existing under the laws of the State of Illinois, with its principal place of business at 1301 Central Street, Evanston, Illinois 60201, and its domestic parent, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures.

3. "Commission" or "FTC" means the Federal Trade Commission, 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 Matter.

4. "Confidential Discovery Material" means all Discovery Material that is confidential or proprietary information produced in discovery. These are materials that are referred to in, and protected by, section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f); section 4.10(a)(2) of the FTC Rules of Practice, 16 C.F.R. § 4.10(a)(2); section 26(c)(7) of the Federal Rules of Civil Procedure, 28 U.S.C. § 26(c)(7); and precedents thereunder. Confidential Discovery Material shall include non-public commercial information, the disclosure of which would likely cause commercial harm to the Producing Party. The following is a non-exhaustive list of examples of information that likely will qualify for treatment as Confidential Discovery Material: strategic plans (involving pricing, marketing, research and development, corporate alliances, or mergers and acquisitions) that have not been revealed to the public; trade secrets; customer-specific evaluations or data (e.g., prices, volumes, or revenues); personnel files and evaluations; information subject to confidentiality or non-disclosure agreements; proprietary

financial data or projections; proprietary consumer, customer or market research or analyses applicable to current or future market conditions, the disclosure of which could reveal Confidential Discovery Material; payor contracts not currently in force that do not qualify for designation as Restricted Confidential Discovery Material; and documents discussing specific prices to be charged, strategic plans, physician performance, or utilization review. Discovery material will not be considered confidential if it is in the public domain.

5. "Counsel of Record" means counsel who have filed notices of appearance in this matter.

6. "Disclosing Party" means a Party that is disclosing or contemplating disclosing Discovery Material pursuant to this Protective Order.

7. "Discovery Material" includes deposition testimony, deposition exhibits, interrogatory responses, admissions, affidavits, declarations, Documents produced pursuant to compulsory process or voluntarily in lieu of process, and any other Documents or information produced or given to one Party by another Party or by a Third Party in connection with discovery in this Matter. Information taken from Discovery Material that reveals its substance shall also be considered Discovery Material.

8. "Document" means the complete original, or a true, correct, and complete copy, and any non-identical copies, of any written or graphic matter, no matter how produced, recorded, stored, or reproduced, and includes all drafts and all copies of every writing, record, or graphic that contain any commentary, notes, or marking that does not appear on the original. "Document" includes, but is not limited to, every writing, letter, envelope, telegram, e-mail, meeting minute, memorandum, statement, affidavit, declaration, book, record, survey, map, study, handwritten

note, working paper, chart, index, tabulation, graph, drawing, chart, photograph, tape, phono record, compact disc, video tape, data sheet, data processing card, printout, microfilm, index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, organizer, desk pad, telephone message slip, note of interview or communication, or any other data compilation from which information can be obtained.

9. "Expert/Consultant" means testifying or consulting experts, and their assistants, who are retained to assist Complaint Counsel or Respondents' counsel in preparation for the hearing or to give testimony at the hearing.

10. "Matter" means the matter captioned *In the Matter of Evanston Northwestern Healthcare Corporation and Evanston Northwestern Medical Group*, Docket Number 9315, pending before the Federal Trade Commission, and all subsequent appellate or other review proceedings related thereto.

11. "Outside Counsel" means (1) the law firm or firms that are counsel of record for Respondents in this Matter and their associated attorneys, with the exception of any such attorney who is also a director, officer or employee of either Respondent; (2) other persons regularly employed by such law firm(s), including, but not limited to, legal assistants, clerical staff, and information management personnel; and (3) temporary personnel, outside vendors or other agents retained by such law firm(s) to perform legal or clerical duties, or to provide logistical litigation support with regard to this Matter. The term Outside Counsel does not include persons retained as consultants or experts for the purposes of this Matter.

12. "Party" means either the FTC, Evanston Northwestern Healthcare Corporation, or Evanston Northwestern Medical Group.

13. "Person" means any natural person, business entity, corporate entity, sole proprietorship, partnership, association, governmental entity, or trust.

14. "Producing Party" means a Party or Third Party that produced or intends to produce Confidential Discovery Material to any of the Parties. With respect to Confidential Discovery Material of a Third Party that is in the possession, custody, or control of the FTC, or has been produced by the FTC in this Matter, the Producing Party shall mean the Third Party that originally provided the Confidential Discovery Material to the FTC. The Producing Party shall also mean the FTC for purposes of any Document or Discovery Material prepared by, or on behalf of, the FTC.

15. "Respondents" means Evanston Northwestern Healthcare Corporation and Evanston Northwestern Medical Group.

16. "Restricted Confidential Discovery Material" means Confidential Discovery Material stamped "Restricted Confidential Discovery Material" that contains non-public, current information that is highly sensitive the disclosure of which would likely cause substantial commercial harm to the Producing Party. The following is a non-exhaustive list of examples of information that likely will qualify for treatment as Restricted Confidential Discovery Material: marketing plans; pricing plans; financial information; trade secrets; documents discussing physician performance; payor contracts currently in force; or payor contracts not currently in

force, but the disclosure of which would likely cause substantial commercial harm. It is the intention of the Parties that this particularly restrictive designation will not be used more than is reasonably necessary.

17. "Third Party" means any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Matter, and their employees, directors, officers, attorneys, and agents.

TERMS AND CONDITIONS OF PROTECTIVE ORDER

I. Discovery Material, or information derived therefrom, shall be used solely by the Parties for purposes of Matter, and shall not be used for any other purpose, including without limitation any business or commercial purpose, except that with notice to the Producing Party, a Party may apply to the Administrative Law Judge for approval of the use or disclosure of any Discovery Material, or information derived therefrom, for any other proceeding. Provided, however, that in the event that the Party seeking to use Discovery Material in any other proceeding is granted leave to do so by the Administrative Law Judge, it will be required to take appropriate steps to preserve the confidentiality of such material. Additionally, in such event, the Commission may only use or disclose Discovery Material as provided by (1) its Rules of Practice, Sections 6(f) and 21 of the Federal Trade Commission Act and any cases so construing them; and (2) any other legal obligation imposed upon the Commission. The Parties, in conducting discovery from Third Parties, shall attach to such discovery requests a copy of this Protective Order and a cover letter that will apprise such Third Parties of their rights hereunder.

2. This paragraph concerns the designation of material as "Confidential" and "Restricted Confidential, Attorney Eyes Only."

(a) Designation of Documents as CONFIDENTIAL - FTC Docket No. 9315.

Discovery Material may be designated as Confidential Discovery Material by Producing Parties by placing on or affixing, in such manner as will not interfere with the legibility thereof, the notation "CONFIDENTIAL - FTC Docket No. 9315" (or other similar notation containing a refrence to this Matter) to the first page of a document containing such Confidential Discovery Material, or, by Parties by instructing the court reporter to denote each page of a transcript containing such Confidential Discovery Material as "Confidential." Such designations shall be made within fourteen days from the initial production or deposition and constitute a good-faith representation by counsel for the Party or Third Party making the designations that the document constitutes or contains "Confidential Discovery Material."

(b) Designation of Documents as "RESTRICTED CONFIDENTIAL, ATTORNEY EYES ONLY - FTC Docket No. 9315."

In order to permit Producing Parties to provide additional protection for a limited number of documents that contain highly sensitive commercial information, Producing Parties may designate documents as "Restricted Confidential, Attorney Eyes Only, FTC Docket No. 9315" by placing on or affixing such legend on each page of the document, or, by Parties by instructing the

court reporter to denote each page of a transcript containing such highly sensitive commercial information as "Restricted Confidential, Attorney Eyes Only." Such designations shall be made within fourteen days from the initial production or deposition and constitute a good-faith representation by counsel for the Party or Third Party making the designations that the document constitutes or contains material that should be considered "Restricted Confidential, Attorney Eyes Only." All deposition transcripts shall be treated as Restricted Confidential, Attorney Eyes Only until the expiration of the fourteen days after the publication of the transcript.

It is anticipated that documents to be designated Restricted Confidential, Attorney Eyes Only may include certain marketing plans, sales forecasts, business plans, the financial terms of contracts, operating plans, pricing and cost data, price terms, analyses of pricing or competition information, and limited proprietary personnel information; and that this particularly restrictive designation is to be utilized for a limited number of documents. Documents designated Restricted Confidential, Attorney Eyes Only may be disclosed to Outside Counsel, Complaint Counsel, and to Experts/Consultants (paragraph 4(c), hereof). Such materials may not be disclosed to witnesses or deponents at trial or deposition (paragraph 4 (d) hereof), except in accordance with subsection (c) of this paragraph 2. In all other respects, Restricted Confidential, Attorney Eyes Only material shall be treated as Confidential Discovery Material and all references in this Protective Order and in the exhibit hereto to Confidential Discovery Material shall include documents designated Restricted Confidential, Attorney Eyes Only.

(c) Disclosure of Restricted Confidential, Attorney Eyes Only Material To Witnesses or Deponents at Trial or Deposition.

If any Party desires to disclose Restricted Confidential, Attorney Eyes Only material to witnesses or deponents at trial or deposition, the disclosing Party shall notify the Producing Party of its desire to disclose such material. Such notice shall identify the specific individual to whom the Restricted Confidential, Attorney Eyes Only material is to be disclosed. Such identification shall include, but not be limited to, the full name and professional address and/or affiliation of the identified individual. The Producing Party may object to the disclosure of the Restricted Confidential, Attorney Eyes Only material within five business days of receiving notice of an intent to disclose the Restricted Confidential, Attorney Eyes Only material to an individual by providing the disclosing Party with a written statement of the reasons for objection. If the Producing Party timely objects, the disclosing Party shall not disclose the Restricted Confidential, Attorney Eyes Only material to the identified individual, absent a written agreement with the Producing Party, order of the Administrative Law Judge or ruling on appeal. The Producing Party lodging an objection and the disclosing Party shall meet and confer in good faith in an attempt to determine the terms of disclosure to the identified individual. If at the end of five business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the disclosing Party may make written application to the Administrative Law Judge as provided by paragraph 6(b) of this Protective Order. If the Producing Party does not object to the disclosure of Restricted Confidential, Attorney Eyes Only material to the identified individual within five business days, the disclosing

Party may disclose the Restricted Confidential, Attorney Eyes Only material to the identified individual.

(d) Disputes Concerning Designation or Disclosure of Restricted Confidential, Attorney Eyes Only Material.

Disputes concerning the designation or disclosure of Restricted Confidential, Attorney Eyes Only material shall be resolved in accordance with the provisions of paragraph 6.

(e) No Presumption or Inference.

No presumption or other inference shall be drawn that material designated Restricted Confidential, Attorney Eyes Only is entitled to the protections of this paragraph.

(f) Due Process Savings Clause.

Nothing herein shall be used to argue that a Party's right to attend the trial of, or other proceedings in, this Matter is affected in any way by the designation of material as Restricted Confidential, Attorney Eyes Only.

3. All documents heretofore obtained by the Commission through compulsory process or voluntarily from any Party or Third Party, regardless of whether designated confidential by the

Party or Third Party, and transcripts of any investigational hearings, interviews and depositions, that were obtained during the pre-complaint stage of this Matter shall be treated as "Confidential," in accordance with paragraph 2(a) of this Order. Furthermore, Complaint Counsel shall, within five business days of the effective date of this Protective Order, provide a copy of this Order to all Parties or Third Parties from whom the Commission obtained documents during the pre-Complaint investigation and shall notify those Parties and Third Parties that they shall have thirty days from the effective date of this Protective Order to determine whether their materials qualify for the higher protection of Restricted Confidential, Attorney Eyes Only and to so designate such documents.

4. Confidential Discovery Material shall not, directly or indirectly, be disclosed or otherwise provided to anyone except to:

(a) Complaint Counsel and the Commission, as permitted by the Commission's Rules of Practice;

(b) Outside Counsel;

(c) Experts/Consultants (in accordance with paragraph 5 hereto);

(d) witnesses or deponents at trial or deposition;

(e) the Administrative Law Judge and personnel assisting him;

(f) court reporters and deposition transcript reporters;

(g) judges and other court personnel of any court having jurisdiction over any appeal proceedings involving this Matter; and

(h) any author or recipient of the Confidential Discovery Material (as indicated on the face of the document, record or material); any individual who was in the direct chain of supervision of the author at the time the Confidential Discovery Material was created or received; any employee or agent of the entity that created or received the Discovery Material; or anyone representing an author or recipient of the Discovery Material in this Matter; and

(i) any other Person(s) authorized in writing by the Producing Party.

5. Confidential Discovery Material, including material designated as "Confidential" and "Restricted Confidential, Attorney Eyes Only," shall not, directly or indirectly, be disclosed or otherwise provided to an Expert/Consultant, unless such Expert/Consultant agrees in writing:

(a) to maintain such Confidential Discovery Material in separate locked rooms or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;

(b) to return such Confidential Discovery Material to Complaint Counsel or Respondents' Outside Counsel, as appropriate, upon the conclusion of the Expert/Consultant's assignment or retention or the conclusion of this Matter;

(c) to not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and

(d) to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.

6. This paragraph governs the procedures for the following specified disclosures and challenges to designations of confidentiality.

(a) Challenges to Confidentiality Designations.

If any Party seeks to challenge a Producing Party's designation of material as Confidential Discovery Material or any other restriction contained within this Protective Order, the challenging Party shall notify the Producing Party and all Parties to this action of the challenge to such designation. Such notice shall identify with specificity (i.e., by document control numbers, deposition transcript page and line reference, or other means sufficient to locate easily such materials) the designation being challenged. The Producing Party may preserve its designation

within five business days of receiving notice of the confidentiality challenge by providing the challenging Party and all Parties to this action with a written statement of the reasons for the designation. If the Producing Party timely preserves its rights, the Parties shall continue to treat the challenged material as Confidential Discovery Material, absent a written agreement with the Producing Party or order of the Administrative Law Judge. The Producing Party, preserving its rights, and the challenging Party shall meet and confer in good faith in an attempt to negotiate changes to any challenged designation. If at the end of five business days of negotiating the parties have not resolved their differences or if counsel determine in good faith that negotiations have failed, the challenging Party may make written application to the Administrative Law Judge as provided by paragraph 6(b) of this Protective Order. If the Producing Party does not preserve its rights within five business days, the challenging Party may alter the designation as contained in the notice. The challenging Party shall notify the Producing Party and the other Parties to this action of any changes in confidentiality designations.

Regardless of confidential designation, copies of published magazine or newspaper articles, excerpts from published books, publicly available tariffs, and public documents filed with the Securities and Exchange Commission or other governmental entity may be used by any Party without reference to the procedures of this subparagraph.

(b) Resolution of Disclosure or Confidentiality Disputes.

If negotiations under subparagraph 6(a) of this Protective Order have failed to resolve the

issues, a Party seeking to disclose Confidential Discovery Material or challenging a confidentiality designation or any other restriction contained within this Protective Order may make written application to the Administrative Law Judge for relief. Such application shall be served on the Producing Party and the other Party, and be accompanied by a certification that the meet and confer obligations of this paragraph have been met, but that good faith negotiations have failed to resolve outstanding issues. The Producing Party and any other Parties shall have five business days to respond to the application. While an application is pending, the Parties shall maintain the pre-application status of the Confidential Discovery Material. Nothing in this Protective Order shall create a presumption or alter the burden of persuading the Administrative Law Judge of the proprietary of a requested disclosure or change in designation.

7. Confidential Discovery Material shall not be disclosed to any person described in subparagraphs 4(c) and 4(d) of this Protective Order until such person has executed and transmitted to Respondents' counsel or Complaint Counsel, as the case may be, a declaration or declarations, as applicable, in the form attached hereto as Exhibit "A," which is incorporated herein by reference. Respondents' counsel and Complaint Counsel shall maintain a file of all such declarations for the duration of the litigation. Confidential Discovery Material shall not be copied or reproduced for use in this Matter except to the extent such copying or reproduction is reasonably necessary to the conduct of this Matter, and all such copies or reproductions shall be subject to the terms of this Protective Order. If the duplication process by which copies or reproductions of Confidential Discovery Material are made does not preserve the confidentiality designations that appear on the original documents, all such copies or reproductions shall be

stamped "CONFIDENTIAL - FTC Docket No. 9315."

8. The Parties shall not be obligated to challenge the propriety of any designation or treatment of information as confidential and the failure to do so promptly shall not preclude any subsequent objection to such designation or treatment, or any motion seeking permission to disclose such material to persons not referred to in paragraph 4. If Confidential Discovery Material is produced without the legend attached, such document shall be treated as Confidential from the time the Producing Party advises Complaint Counsel and Respondents' counsel in writing that such material should be so designated and provides all the Parties with an appropriately labeled replacement. The Parties shall return promptly or destroy the unmarked documents.

9. If the FTC: (a) receives a discovery request that may require the disclosure by it of a Third Party's Confidential Discovery Material; or (b) intends to or is required to disclose, voluntarily or involuntarily, a Third Party's Confidential Discovery Material (whether or not such disclosure is in response to a discovery request), the FTC promptly shall notify the Third Party of either receipt of such request or its intention to disclose such material. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Third Party at least five business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Third Party of its rights hereunder.

10. If any person receives a discovery request in another proceeding that may require the

disclosure of a Producing Party's Confidential Discovery Material, the subpoena recipient promptly shall notify the Producing Party of receipt of such request. Such notification shall be in writing and, if not otherwise done, sent for receipt by the Producing Part at least five business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the Producing Party of its rights hereunder. The Producing Party shall be solely responsible for asserting any objection to the requested production. Nothing herein shall be construed as requiring the subpoena recipient or anyone else covered by this Order to challenge or appeal any such order requiring production of Confidential Discovery Material, or to subject itself to any penalties for noncompliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission.

11. This Order governs the disclosure of information during the course of discovery and does not constitute an *in camera* order as provided in Section 3.45 of the Commission's Rules of Practice, 16 C.F.R. § 3.45.

12. Nothing in this Protective Order shall be construed to conflict with the provisions of Sections 6, 10, and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 50, 57b-2, or with Rules 3.22, 3.45 or 4.11(b)-(e), 16 C.F.R. §§ 3.22, 3.45 and 4.11(b)-(e).[1]

[1] The right of the Administrative Law Judge, the Commission, and reviewing courts to disclose information afforded *in camera* treatment or Confidential Discovery Material, to the extent necessary for proper disposition of the proceeding, is specifically reserved pursuant to Rule 3.45, 16 C.F.R. § 3.45.

Any Party or Producing Party may move at any time for in *camera* treatment of any Confidential Discovery Material or any portion of the proceedings in this Matter to the extent necessary for proper disposition of the Matter. An application for in *camera* treatment must meet the standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999) and *In re Hoechst Marion Roussel Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000) and must be supported by a declaration or affidavit by a person qualified to explain the nature of the documents.

13. At the conclusion of this Matter, Respondents' counsel shall return to the Producing Party, or destroy, all originals and copies of documents and all notes, memoranda, or other papers containing Confidential Discovery Material which have not been made part of the public record in this Matter. Complaint Counsel shall dispose of all documents in accordance with Rule 4.12, 16 C.F.R. § 4.12.

14. The provisions of this Protective Order, insofar as they restrict the communication and use of Confidential Discovery Material shall, without written permission of the Producing Party or further order of the Administrative Law Judge hearing this Matter, continue to be binding after the conclusion of this Matter.

15. This Protective Order shall not apply to the disclosure by a Producing Party or its Counsel of such Producing Party's Confidential Discovery Material to such Producing Party's employees, agents, former employees, board members, directors, and officers.

16. The production or disclosure of any Discovery Material made after entry of this Protective Order which a Producing Party claims was inadvertent and should not have been produced or disclosed because of a privilege will not automatically be deemed to be a waiver of any privilege to which the Producing Party would have been entitled had the privileged Discovery Material not inadvertently been produced or disclosed. In the event of such claimed inadvertent production or disclosure, the following procedures shall be followed:

(a) The Producing Party may request the return of any such Discovery Material within twenty days of discovering that it was inadvertently produced or disclosed (or inadvertently produced or disclosed without redacting the privileged content). A request for the return of any Discovery Material shall identify the specific Discovery Material and the basis for asserting that the specific Discovery Material (or portions thereof) is subject to the attorney-client privilege or the work product doctrine and the date of discovery that there had been an inadvertent production or disclosure.

(b) If a Producing Party requests the return, pursuant to this paragraph, of any such Discovery Material from another Party, the Party to whom the request is made shall return immediately to the Producing Party all copies of the Discovery Material within its possession, custody, or control-including all copies in the possession of experts, consultants, or others to whom the Discovery Material was provided-unless the Party asked to return the Discovery Material in good faith reasonably believes that the Discovery Material is not privileged. Such good faith belief shall be based on either (i) a facial review of the Discovery Material, or (ii) the

inadequacy of any explanations provided by the Producing Party, and shall not be based on an argument that production or disclosure of the Discovery Material waived any privilege. In the event that only portions of the Discovery Material contain privileged subject matter, the Producing Party shall substitute a redacted version of the Discovery Material at the time of making the request for the return of the requested Discovery Material.

(c) Should the Party contesting the request to return the Discovery Material pursuant to this paragraph decline to return the Discovery Material, the Producing Party seeking return of the Discovery Material may thereafter move for an order compelling the return of the Discovery Material. In any such motion, the Producing Party shall have the burden of showing that the Discovery Material is privileged and that the production was inadvertent.

17. Entry of the foregoing Protective Order is without prejudice to the right of the Parties or Third Parties to apply for further protective orders or for modification of any provisions of this Protective Order.

ORDERED:

Stephen J. McGuire
Chief Administrative Law Judge

March 24, 2004

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

In the matter of EVANSTON NORTHWESTERN HEALTHCARE CORPORATION, and ENH MEDICAL GROUP, INC., Respondents.	Docket No. 9315

DECLARATION CONCERNING PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

I, [NAME], hereby declare and certify the following to be true:

1. [Statement of employment]

2. I have read the "Protective Order Governing Discovery Material" ("Protective Order") issued by Administrative Law Judge Stephen J. McGuire on March 24, 2004, in connection with the above-captioned matter. I understand the restrictions on my use of any Confidential Discovery Material (as this term is used in the Protective Order) in this action and I agree to abide by the Protective Order.

3. I understand that the restrictions on my use of such Confidential Discovery Material include:

   a. that I will use such Confidential Discovery Material only for the purposes of preparing for this proceeding, and hearing(s) and any appeal of this proceeding and for no other purpose;

   b. that I will not disclose such Confidential Discovery Material to anyone, except as permitted by the Protective Order; and

c. that upon the termination of my participation in this proceeding I will promptly return all Confidential Discovery Material, and all notes, memoranda, or other papers containing Confidential Discovery Material, to Complaint Counsel or Respondents' counsel, as appropriate.

4. I understand that if I am receiving Confidential Discovery Material as an Expert/Consultant, as that term is defined in this Protective Order, the restrictions on my use of Confidential Discovery Material also include the duty and obligation:

a. to maintain such Confidential Discovery Material in separate locked room(s) or locked cabinet(s) when such Confidential Discovery Material is not being reviewed;

b. to return such Confidential Discovery Material to Complaint Counsel or Respondents' Outside Counsel, as appropriate, upon the conclusion of my assignment or retention; and

c. to use such Confidential Discovery Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.

5. I am fully aware that, pursuant to Section 3.42(h) of the Commission's Rules of Practice, 16 C.F.R. § 3.42(h), my failure to comply with the terms of the Protective Order may constitute contempt of the Commission and may subject me to sanctions imposed by the Commission.

_____ Date: _____

Full Name [Typed or Printed]

_____

Signature

Tab B

SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO

Lois Laurie
Abbott Laboratories
100 Abbott Park Road
Abbott Park, IL 60064-6400

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

3. PLACE OF HEARING

Michael T. Hannafan & Assoc., Ltd.
One East Wacker Drive, Suite 1208
Chicago, IL 60601

4. YOUR APPEARANCE WILL BE BEFORE

Michael T. Hannafan or other designated counsel

5. DATE AND TIME OF HEARING OR DEPOSITION

September 7, 2004 at 10:00 a.m.

6. SUBJECT OF PROCEEDING

In the Matter of Evanston Northwestern Healthcare Corporation, et al., Docket No. 9315

7. ADMINISTRATIVE LAW JUDGE

The Honorable Stephen J. McGuire

Federal Trade Commission
Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA

Michael T. Hannafan (312) 527-0055
Nicholas A. Pavich (312) 527-0055

DATE ISSUED

JUL 16 2004

SECRETARY'S SIGNATURE

Donald S. Clark

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 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 with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

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

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

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2004, a copy of the foregoing Subpoena *Ad Testificandum* was served by first class mail, postage prepaid, on:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave. NW (H-106)
Washington, DC 20580

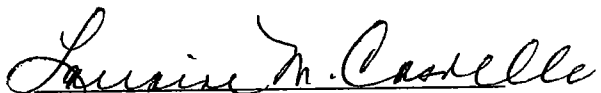
Thomas H. Brock, Esq.
Federal Trade Commission
600 Pennsylvania, Ave. NW (H-374)
Washington, DC 20580
tbrock@ftc.gov

Philip M. Eisenstat, Esq.
Federal Trade Commission
601 New Jersey Avenue, N.W.
Room NJ-5235
Washington, DC 20580
peisenstat@ftc.gov

Chul Pak, Esq.
Assistant Director Mergers IV
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580
cpak@ftc.gov

Mr. Donald S. Clark
Secretary of the Commission
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Room H-159
Washington, D.C. 20580
dclark@ftc.gov

Duane Kelley, Esq.
Michael Sibarium, Esq.
Charles Klein, Esq.
David Dahlquist, Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, IL 60601
dkelley@winston.com
msibarium@Winston.com
cklein@winston.com
ddahlquist@winston.com



Lorraine M. Casiello

Michael T. Hannafan & Associates, Ltd.
One East Wacker Drive
Suite 1208
Chicago, Illinois 60601
(312) 527-0055

Michael T. Hannafan
Nicholas A. Pavich
Michael T. Hannafan & Associates, Ltd.
One East Wacker Drive
Suite 1208
Chicago, IL 60601
(312) 527-0055
mth@hannafanlaw.com
nap@hannafanlaw.com

Tab C

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

STATEMENT OF THOMAS M. CRISHAM

I, Thomas M. Crisham, do hereby state as follows:

1. Pursuant to FTC Rule of Practice 3.22(f), I have had several conferences with counsel for the Respondents in a good-faith effort to reach an agreement as to the scope of documents requested in the Subpoenas *Duces Tecum* served upon Abbott Laboratories and Towers Perrin as follows:

August 8, 2004 –	Telephone conversation between myself and Michael T. Hannafan;
August 9, 2004 –	In person meeting between myself and Michael T. Hannafan and Nick Pavich; and
August 30, 2004 –	Telephone conversation between myself and Michael T. Hannafan.

2. Although an agreement was reached as to certain categories of the subpoenas, the parties have not been able to reach an agreement as to the following:

A. All documents, reports, studies, surveys, or audits referring or relating in any manner to the ENH/Highland Park transaction.

B. All documents prepared by or for Your Company assessing, analyzing, reporting, or comparing prices for healthcare services at ENH or Highland Park and any other health care facility.

C. All documents which describe, compare, or evaluate the health care services, the quality of services, the cost of services, the staff, or the facilities of hospitals in the Geographic Area, including, but not limited to, ENH.

D. All documents, information, materials and statistics used, cited, or relied upon in the preparation or drafting of the "Health Care Cost Drill Down" reports by Towers Perrin dated in November and December 2001 and distributed to Abbott Laboratories.

E. All documents relating to competition in the provision of any health care service in the Geographic Area, including, but not limited to, market studies, forecasts, and surveys, and all other documents relating to:

(1) the quality of care provided by any hospital;
(2) the relative strength or weakness of hospitals providing any health care service;
(3) hospital preferences or perceptions of consumers, patients, or physicians (including but not limited to, patient satisfaction surveys);
(4) the preferences of third party payors for hospitals;
(5) any comparisons of any hospital's contracted hospital rates with another hospital's rates.

F. All documents describing or evaluating the ability to shit patients from one healthcare facility to another, or to encourage or discourage patients to use one hospital more than another.

I declare that the following statements are true and correct to the best of my knowledge, information and belief.

Thomas M. Crisham

Tab D

MICHAEL T. HANNAFAN & ASSOCIATES, LTD.

One East Wacker Drive
Suite 1208
Chicago, Illinois 60601
(312) 527-0055
Fax: (312) 527-0220

www.hannafanlaw.com

August 27, 2004

Via Facsimile

Jane McCahill, Esq.
Towers Perrin Forster & Crosby, Inc.
Legal Resources Department
1500 Market Street
Centre Square East
Philadelphia, PA 19102

Thomas M. Crisham, Esq.
Crisham & Kubes, Ltd.
30 North LaSalle Street
Suite 2800
Chicago, IL 60602

Re: Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc. FTC Docket No. 9315
Your File: 50058 10422

Dear Ms. McCahill and Mr. Crisham:

Pursuant to Tom Crisham's August 10, 2004 letter, this letter will serve as written notice terminating the indefinite extension of time to move to limit or quash the subpoena previously served on you clients. My client requests that each of your clients produce documents responsive to the subpoenas previously served on them as soon as possible. Michael Hannafan and I are both still hopeful that the parties can come to a mutual agreement regarding the production. Please contact us on Monday, August 30th to discuss how and when you will produce the responsive documents. Thank you.

Very truly yours,

Nicholas A. Pavich

NAP:lmc

Thomas M. Crisham

312.917.8460 **tcrisham@crishamlaw.com**

August 10, 2004

VIA FACSIMILE AND U.S. MAIL
Michael T. Hannafan
Michael T. Hannafan & Associates, Ltd.
One East Wacker Drive
Suite 1208
Chicago, Illinois 60601

In Re: **Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc.**
FTC Docket No. 9315
Our File No. 50058.10422

Dear Mr. Hannafan:

Thank you for meeting with me yesterday to discuss the issues concerning the subpoena served upon Abbott in the above-referenced matter.

I am confirming our agreement that the time in which Abbott is required to move to limit or quash the subpoena is continued indefinitely. Either side may terminate the indefinite extension upon ten day's written notice to the other.

I look forward to continued fruitful discussions with you.

Sincerely,

CRISHAM & KUBES, LTD.

Thomas M. Crisham

TMC/crs
cc: Nancy Kim, Abbott Laboratories, Inc. (via e-mail)
Nicholas A. Pavich