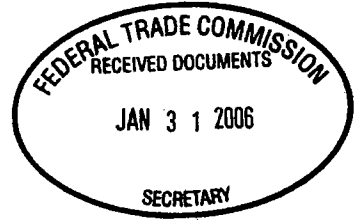


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



\_\_\_\_\_  
In the Matter of )  
 )  
EVANSTON NORTHWESTERN HEALTHCARE )  
CORPORATION, )  
 )  
and )  
 )  
ENH MEDICAL GROUP, INC., )  
Respondents. )  
\_\_\_\_\_

Docket No. 9315

**ORDER CERTIFYING TO THE COMMISSION THE CONSENT MOTION TO  
WAIVE *IN CAMERA* PROTECTION OF SELECTED PLEADINGS AND EXHIBITS**

**I.**

Respondent Evanston Northwestern Healthcare, Inc. (“ENH”), on October 6, 2005, with Complaint Counsel’s consent, filed a motion seeking to waive *in camera* treatment for certain pleadings filed and certain documents admitted into evidence during the trial of this matter (“Consent Motion”). The parties also jointly request that one of Respondent’s replies to Complaint Counsel’s findings of fact, for which *in camera* formatting was inadvertently omitted, be corrected. The Consent Motion was accompanied by the selected pages of the post-trial briefs and proposed findings of fact and replies thereto for which the parties seek to waive *in camera* status. On January 24, 2006, the parties provided tables identifying the specific sections of the pleadings for which the parties seek to waive *in camera* status.

The Initial Decision in this case was filed on October 17, 2005, pursuant to Commission Rule 3.51. For the reasons set forth below, the joint motion is CERTIFIED to the Commission, with the recommendation that it be granted.

**II.**

Rule 3.51(e)(2) of the Commission’s Rules of Practice sets forth, “[e]xcept for the correction of clerical errors or pursuant to an order of remand from the Commission, the jurisdiction of the Administrative Law Judge is terminated upon the filing of his initial decision with respect to those issues decided pursuant to paragraph (c)(1) of this section.” 16 C.F.R. § 3.51(e)(2). Paragraph (c)(1) of Rule 3.51 states:

An initial decision shall be based on a consideration of the whole record relevant to the issues decided, and shall be supported by reliable and probative evidence. The initial decision shall include a statement of findings (with specific page references to principal supporting items of evidence in the record) and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record (or those designated under paragraph (c)(2) of this section) and an appropriate rule or order. Rulings containing information granted *in camera* status pursuant to § 3.45 shall be filed in accordance with § 3.45(f).

16 C.F.R. § 3.51(c)(1). Among the issues decided prior to and incorporated in the Initial Decision were the various motions for *in camera* treatment filed by the parties and by non-parties. See *In re Evanston Northwestern Healthcare*, 2005 FTC LEXIS 146, at \*10-11 (Initial Decision, Oct. 17, 2005). Because the Initial Decision has been filed and rulings on *in camera* treatment were incorporated in the Initial Decision, the Administrative Law Judge no longer has jurisdiction to rule on the consent motion to waive *in camera* protection. See *In re R.J. Reynolds Tobacco Co.*, 127 F.T.C. 765, 765 n.1 (May 26, 1999) (motion directed to the Administrative Law Judge relating to modification of Protective Order Governing Confidential Material resolved by the Commission on ground that the proceeding had been concluded).

Rule 3.22(a) of the Commission's Rules of Practice requires, "[t]he Administrative Law Judge shall certify to the Commission any motion upon which he or she has no authority to rule, accompanied by any recommendation that he or she may deem appropriate. Such recommendation may contain a proposed disposition of the motion or other relevant comments." 16 C.F.R. § 3.22(a). Pursuant to Rule 3.22(a), the joint motion is hereby certified to the Commission on the grounds that the Administrative Law Judge no longer has jurisdiction to rule on it. The recommendation deemed appropriate is set forth below.

### III.

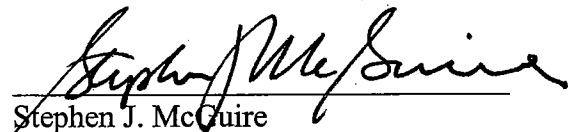
The Federal Trade Commission strongly favors making available to the public the full record of its adjudicative proceedings to permit public evaluation of the fairness of the Commission's work and to provide guidance to persons affected by its actions. *In re Crown Cork & Seal Co., Inc.*, 71 F.T.C. 1714, 1714-15 (June 26, 1967); *Hood*, 58 F.T.C. 1184, 1186 (Mar. 14, 1961) ("[T]here is a substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons."). "Recognizing that in some instances the ALJ or Commission cannot know that a certain piece of information may be critical to the public understanding of agency action until the Initial Decision or the Opinion of the Commission is issued, the Commission and the ALJs retain the power to reassess prior *in camera* rulings at the time of publication of decisions." *In re General Foods Corp.*, 95 F.T.C. 352, 356 n.7 (Mar. 10, 1980).

To further the FTC's policy of making critical information available to the public, the parties agreed to review their respective public post-trial filings, including post-trial briefs, proposed findings of fact, and responses to the proposed findings of fact, to identify discussions of trial testimony elicited during *in camera* sessions and trial exhibits granted *in camera* treatment that, in the parties' view, no longer warrant *in camera* protection. Consent Motion at 1-2. The parties represent that they are not requesting removal of *in camera* protection for any *in camera* testimony elicited from a third party or any trial exhibit granted *in camera* protection at the request of a third party. Consent Motion at 2.

Having thoroughly reviewed the Consent Motion and the tables identifying the specific sections of the pleadings for which the parties seek to waive *in camera* status in conjunction with the revised pleadings and original pleadings, it is recommended that the Consent Motion be granted. *In camera* treatment would thus be waived for the sections of pleadings identified in the parties' January 24, 2006 correspondence, as well as for trial exhibits RX 1821, RX 1822, and RX 1995. In addition, it is recommended that the parties' request to properly mark as *in camera* page 15 of Section I of Respondent's Reply to Complaint Counsel's Findings, Response to Finding No. 2 should be granted.

The revised pleadings will have slightly different page numbers due to the removal of the *in camera* formatting. Therefore, it is also recommended that the original public pleadings be retained in the public record. The revised public pleadings will enhance understanding of this matter and will be in the public's interest.

ORDERED:

  
Stephen J. McGuire  
Chief Administrative Law Judge

Date: January 31, 2006

