

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

| | | |
|--|---|-----------------|
| In the Matter of |) | |
| |) | |
| |) | |
| Evanston Northwestern Healthcare Corporation, |) | Docket No. 9315 |
| a corporation, and |) | |
| |) | Public Filing |
| ENH Medical Group, Inc., |) | |
| a corporation. |) | |
| |) | |

**MOTION FOR COST REIMBURSEMENT TO
THIRD PARTY SUBPOENAED BY RESPONDENTS**

Great-West Healthcare of Illinois, Inc. (“Great-West Healthcare”) hereby moves for cost reimbursement with respect to locating and producing documents in compliance with the subpoena served upon it by Respondents, Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc. (collectively “Respondents”). In support thereof Great-West Healthcare submits the affidavits of Michael Abbene, Diana N. Bluh, Lori Earnest, David Livingston, William Patten and Kim Stielow, contained in Group Exhibit A, and states the following:

1. Respondents have directed a subpoena to Great-West Health Care, requesting documents as set forth in 43 paragraphs and 26 subparagraphs (the “Subpoena”).
2. Counsel for Great-West Healthcare and Respondents have participated in two discovery conferences pursuant to 16 C.F.R. §3.22(f). As a result, Great-West Healthcare and Respondents have reached agreement on limiting the scope of the subpoena in certain respects and continue to attempt to further limit the scope of the Subpoena. Nevertheless, as set forth in the affidavits contained in Group Exhibit A, the cost incurred by Great-West Healthcare for salaries and wages of current employees and hourly charges for temporary employees in

responding to the Subpoena could approach \$50,000, with the exact cost dependent (a) on the ultimate agreement between Great-West Health Care and Respondents as to the documents to be produced pursuant to the Subpoena, and (b) on any orders entered herein with respect to the documents to be produced pursuant to the Subpoena.

3. Respondents and Great-West Health-Care have agreed that certain copying will be done by a litigation copy service, which will bill Respondents directly. Respondents and Great-West Healthcare have further agreed that Respondents will reimburse Great-West Healthcare for any copying costs which Great-West Healthcare may incur in copying documents itself, as may be requested by Respondents, with the exact cost dependent (a) on the ultimate agreement between Great-West Health Care and Respondents as to the documents which Great-West Healthcare will copy itself, and (b) on any orders entered herein with respect to the documents to be copied.

4. As set forth in the affidavits contained in Group Exhibit A, the costs incurred by Great-West Healthcare in locating the subpoenaed documents and assembling the documents for copying, on an hourly basis, with respect to its employees and contract personnel, will be as follows:

| <u>Personnel</u> | <u>Hourly Rate</u> |
|--|---------------------------|
| Employee - Administrative and Clerical | \$19.00 - 50.00 |
| Contract - Administrative and Clerical | 15.00 - 31.25 |
| Employee - Programmer | 65.50 |

5. Third party witnesses may be compensated to cover the cost of producing voluminous records in response to a subpoena. *FTC Manual*, §10.13.6.4.7.8. The Federal Rules of Civil Procedure may be consulted for guidance and interpretation of FTC rules where no other authority exists. *FTC Manual*, §10.7. FRCP 45 requires the court to protect a non-party by requiring the party seeking discovery to bear enough of the expenses of complying with a

subpoena so that compliance with the subpoena does not impose significant expense on the non-party. *Linder v. Calero-Portocarrero*, 251 F. 3d 178, 182 (D.C. Cir. 2001).

6. It would be appropriate and reasonable to require Respondents to reimburse Great-West Healthcare for its hourly costs in locating and assembling the documents for copying which it will produce in compliance with the Subpoena and for any costs it may incur in having the documents copied, as set forth above.

7. The parties have conferred twice in an effort to resolve by agreement the issues raised by this motion. Such conferences occurred by telephone on May 20, 2004, at 2:00 p.m. (CDT), and on May 28, 2004, at 10:00 a.m. (CDT). Participating in such conferences were David E. Dahlquist, counsel for Respondents, and Franklin S. Schwerin and Max K. Jones, Jr., counsel for Great-West Healthcare. In addition, Richard G. Schultz, counsel for Great-West Healthcare participated in the conference of May 20, 2004. Mr. Dahlquist agreed on behalf of Respondents to reimburse Great-West Healthcare for copying costs, as set forth above, but he would not agree to reimburse Great-West Healthcare for any costs in locating and assembling the documents for copying.

WHEREFORE, Great-West Healthcare respectfully requests that an order be entered requiring Respondents to reimburse Great-West Healthcare for its costs incurred in locating the subpoenaed documents and assembling the documents for copying, at the hourly rates as set forth in paragraph 4 above, and for any costs it may incur in retrieving documents and copying the documents, as set forth in paragraph 3 above.

Dated: June 3, 2004

GREAT-WEST HEALTHCARE OF
ILLINOIS, INC.

By: /S/ Franklin S. Schwerin
One of its attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2004, a copy of the foregoing Motion For Cost Reimbursement was served by overnight courier delivery on:

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

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

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

Chul Pak, Esq.
Assistant Director Mergers IV
Federal Trade Commission
601 New Jersey Avenue, N.W. (NJ-5238)
Washington, DC 20580

and by messenger on:

David Dahlquist, Esq.
Winston & Strawn, LLP
35 West Wacker Drive
Chicago, IL 60601

/S/ Franklin S. Schwerin
Franklin S. Schwerin

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| a corporation. |) | |
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ORDER

1. Upon motion of Great-West Healthcare of Illinois, Inc. (“Great-West Healthcare”), it is hereby ordered that Respondents, Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc., shall reimburse Great-West Healthcare for its costs incurred in locating and producing documents in compliance with the subpoena served upon Great-West Healthcare by Respondents, on an hourly basis, with respect to its employees and contract personnel, as follows:

| <u>Personnel</u> | <u>Hourly Rate</u> |
|--|---------------------------|
| Employee - Administrative and Clerical | \$19.00 - 50.00 |
| Contract - Administrative and Clerical | 15.00 - 31.25 |
| Employee - Programmer | 65.50 |

In addition, Respondents shall reimburse Great-West Healthcare for any costs it may incur in retrieving documents and copying documents itself, as may be requested by Respondents.

ENTER:

Administrative Law Judge

Prepared By:

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Schwartz, Cooper, Greenberger & Krauss, Chtd.
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Chicago, IL 60601
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GROUP EXHIBIT A

Affidavit of Michael Abbene

Affidavit of Diana N. Bluh

Affidavit of Lori Earnest

Affidavit of David Livingston

Affidavit of William Patten

Affidavit of Kim Stielow