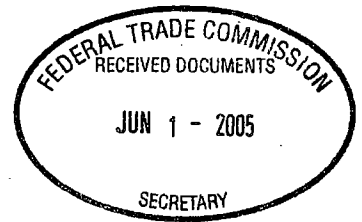


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of )

EVANSTON NORTHWESTERN HEALTHCARE )  
CORPORATION, )

and )

ENH MEDICAL GROUP, INC., )  
Respondents. )

Docket No. 9315

ORDER ON MOTIONS FOR *IN CAMERA* TREATMENT  
OF DOCUMENTS ADMITTED AT TRIAL

I.

Pursuant to Commission Rule 3.45(b), Evanston Northwestern Healthcare Corp. ("Respondent") and non-party Private Healthcare Systems, Inc. ("PHCS") filed additional motions for *in camera* treatment of documents that were admitted at trial in this matter.

In Commission proceedings, requests for *in camera* treatment must show that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved. *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984); *In re H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the documentary evidence is "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury," and then balancing that factor against the importance of the information in explaining the rationale of Commission decisions. *Kaiser*, 103 F.T.C. at 500; *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Bristol Myers Co.*, 90 F.T.C. 455, 456 (1977).

Indefinite *in camera* treatment is granted only in those "unusual" cases where the competitive sensitivity or the proprietary value of the information will not diminish with the passage of time. *In re Coca-Cola Co.*, 1990 FTC LEXIS 364, at \*6-7 (Oct. 17, 1990). Examples of documents meriting indefinite *in camera* treatment are trade secrets, such as secret formulas, processes, and other secret technical information, and information that is privileged. *See Hood*, 58 F.T.C. at 1189; *In re R.R. Donnelley & Sons Co.*, 1993 FTC LEXIS 32, at \*3 (Feb. 18, 1993); *In re Textron, Inc.*, 1991 FTC LEXIS 135, at \*1 (Apr. 26, 1991). Where *in camera* treatment is

granted for ordinary business records, such as business plans, marketing plans, or sales documents, it is typically extended for two to five years. *E.g.*, *In re E.I. Dupont de Nemours & Co.*, 97 F.T.C. 116, 118 (1981); *In re Int'l Ass. of Conf. Interpreters*, 1996 FTC LEXIS 298, \*13-14 (June 26, 1996).

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 (1967); *Hood*, 58 F.T.C. at 1186 (“[T]here is a substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.”). A heavy burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Hood*, 58 F.T.C. at 1188. Further, requests for indefinite *in camera* treatment must include evidence to justify why the document should be withheld from the public's purview in perpetuity and why the requestor believes the information is likely to remain sensitive or become more sensitive with the passage of time. *See DuPont*, 97 F.T.C. at 117. Thus, in order to sustain the heavy burden for withholding documents from the public record, an affidavit or declaration demonstrating that a document is sufficiently secret and material to the applicant's business that disclosure would result in serious competitive injury is required. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at \*2-3 (Apr. 23, 2004). The parties and non-parties have been advised of these requirements. Scheduling Order, Additional Provisions, ¶ 16; Protective Order, ¶ 12.

## II.

Non-party Private Healthcare Systems, Inc. (“PHCS”), on May 12, 2005, filed a second motion seeking *in camera* treatment for one document for a period of ten years. The document contains information related to contract negotiations and rates. No opposition to the motion for *in camera* treatment has been filed.

PHCS's motion provides declarations of Jason M. Dunn, Senior Vice President and General Counsel for Private Healthcare Systems, Inc. (“Dunn Declaration”) and Irving Miller, Senior Actuary for Private Healthcare Systems, Inc. (“Miller Declaration”). As described by the Dunn and Miller Declarations, the information for which *in camera* treatment is sought has been maintained in confidence and its disclosure would cause serious competitive injury.

A review of the declarations in support of the motion and the document reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, PHCS's motion is **GRANTED**. *In camera* treatment, for a period of ten years, to expire on February 1, 2015, is granted to RX 2030-001 to 007.

### III.

Respondent, on May 17, 2005, filed a second supplemental motion seeking *in camera* treatment. Respondent seeks *in camera* treatment for periods of three, five, and ten years depending on the type of information. In addition, Respondent seeks *in camera* treatment for an indefinite period for specific pages of documents which contain personal medical information of patients or employees. Respondent represents that Complaint Counsel does not oppose the motion for *in camera* treatment.

Respondent's motion incorporates the declarations of Margaret King, Senior Vice President at ENH; David Loveland, Senior Vice President, Corporate Relations at ENH; and Brian Washa, Vice President, Business Services at ENH. As described by the declarations, the information for which *in camera* treatment is sought includes pricing, market analysis, performance, patient, and employee information. The declarations demonstrate that the information for which *in camera* treatment is sought has been maintained as confidential and disclosure of the information would result in a clearly defined, serious injury to Respondent.

A review of the declarations in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Respondent's motion is **GRANTED**. *In camera* treatment is granted to the documents in the following table for the time period identified.

Exhibit No.	Duplicate No.	Pages Granted <i>In Camera</i> Protection	Time Period
CX 1099	RX 581	All	5 years
CX 2312		ENHL PK 29306	permanent (modifies prior order)
CX 6285		CX 6285-003	permanent
CX 6296		All	10 years
CX 6297		All	10 years
RX 324	CX 2315	All	10 years
RX 839	CX 324	All	5 years
RX 1771		ENHL PK 26525 to 26528	permanent (modifies prior order)
RX 2021		All	3 years
RX 2033		All	10 years
RX 2034		All	permanent

RX 2038		All	5 years
RX 2039		All	5 years
RX 2040		All	5 years
RX 2041		All	5 years
RX 2044		All	5 years


In addition, during the course of the trial, Respondent waived *in camera* protection for a number of documents which had previously been granted *in camera* protection. The documents for which *in camera* protection has been waived are included in the following table.

<b>Exhibit No.</b>	<b>Duplicate No.</b>	<b>Pages <i>In Camera</i> Protection Waived</b>
RX 324	CX 2315	CX 2315-026 (ENHL PK 29713)
RX 349		ENH RS 3438
RX 657	CX 6267	ENHL PK 29821
RX 679	CX 1607	All
RX 684	CX 75	All
RX 696	CX 111	All
RX 705		All
RX 785	CX 67	All
RX 889		All
RX 925		All
RX 1445		All
RX 1910		1 to 30
RX 1912		1 to 13, 19, 25, 60
RX 1993	CX 1998	All

IV.

*In camera* status will be granted to the trial testimony of witnesses who provide live testimony regarding the information that has been granted *in camera* status in this Order.

ORDERED:

  
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Stephen J. McGuire  
Chief Administrative Law Judge

Date: June 1, 2005

