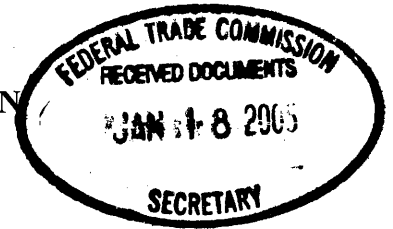


UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



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

Docket No. 9315

**MOTION FOR *IN CAMERA* STATUS AND FOR A PROTECTIVE ORDER**

Pursuant to 16 C.F.R. §§3.45 and 4.10, Rush University Medical Center, formerly known as Rush Presbyterian-St. Lukes Medical Center (“RUMC”), moves for an order granting *in camera* status and the entry of an appropriate Protective Order preventing the public disclosure of certain documents initially produced by RUMC and more recently identified by Respondents, Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc., as trial exhibits. Those documents to be used as exhibits are listed in Exhibit A, attached hereto (the “Documents”). RUMC moves for *in camera* treatment of documents listed on Exhibit B. In support of its motion, RUMC states as follows:

1. RUMC first received notice from ENH of its intent to offer into evidence the documents listed in Exhibit A by letter from its attorneys dated January 5, 2005 which is attached hereto as Exhibit C (the “Notice”). As counsel for ENH states in the Notice, the Notice was sent after the January 4, 2005 deadline for filing motions for *in camera* treatment of identified documents because of difficulty in identifying the proper custodian of these

documents. Counsel for ENH states in the Notice that it will consent to the late filing of this motion.

2. RUMC seeks *in camera* treatment for the documents listed in Exhibit B all of which contain prices or price related terms which are the result of extensive negotiations between RUMC and third party payors in the highly competitive Chicago healthcare market. RUMC had previously designated these documents as “Confidential for Attorney’s Eyes Only” pursuant to the Protective Order Governing Discovery Material in this matter.

3. The Administrative Law Judge possesses broad discretion to grant *in camera* status to confidential business data, so as to avoid competitive injury from the public disclosure of sensitive information. See e.g., *Eaton, Yale & Towne*, 79 F.T.C. 998, 1001 (1971).

4. Information contained in the documents listed on Exhibit B is unique to each business relationship between RUMC and their contracted third party payors.

5. *In camera* treatment of these documents is consistent with the standards set forth in 16 CFR sec. 3.45(b) and *in re Bristol-Meyers Company*, 90 F.T.C. 455 (1977).

a. In order to avoid competitive disadvantage, RUMC, like all institutional providers in the Chicago healthcare market, keeps its managed care prices and price related terms as well as its negotiation tactics and strategy, strictly confidential.

b. Even within RUMC, knowledge of negotiated prices and price related terms is limited .

c. As a result of its diligence to protect the confidentiality of such information, RUMC competitors have no basis to know or determine RUMC prices or other price related terms such as discounts, with specific third party payors

d. RUMC investment in preparation and negotiation with each third party payor is costly and lengthy.

6. Specifically, Exhibit RX-1051, pages FTC-ROPH 0000991 and 0000992 and Exhibit RX-0325, pages FTC-ROPH 0001-1004 and 0001005 contain current price or price related terms. Public disclosure of these documents would result in clearly defined, serious injury to RUMC, if competing area providers are able to use this information in their negotiations with the same third party payors.

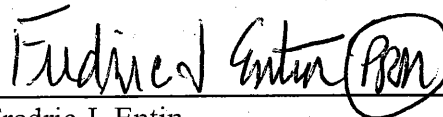
7. Similarly, Exhibit RX-0838, pages FTC-ROPH 0000023-0000057 contains prices or price related terms for RUMC and other members of the Rush System for Health, which negotiates with third party payors on behalf of RUMC and the other members of the Rush System for Health. Although the prices and price related terms in this proposed Exhibit are not current, RUMC competitors, aware of the factors influencing all contract negotiations in this marketplace can determine within a reasonable degree of certainty, current RUMC prices and price related terms with this particular

third party payor. Public disclosure of these documents would result in clearly defined, serious injury to RUMC, if competing area providers are able to use this information in their negotiations with the same third party payors.

8. The competitive sensitivity of the information on the documents listed in Exhibit B will not diminish over time and competitors of RUMC can determine within a reasonable degree of certainty current prices and price related terms negotiated with third party payors even with information more than three years old. RUMC submits that it is appropriate that *in camera* treatment of this information be of indefinite length. *In re Hoechst Marion Roussel, Inc.* 2000 F.T.C. Lexis 157(November 22, 2000).

NOW THEREFORE, RUMC respectfully requests that the Administrative Law Judge exercise his judicial discretion and grant RUMC's Motion for *in camera* status for those trial exhibits identified in Exhibit B attached hereto, so as to prevent public disclosure of these materials and serious competitive injury to RUMC.

Respectfully submitted,



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Fredric J. Entin  
Counsel for Rush University Medical Center

Fredric J. Entin  
Foley & Lardner LLP  
321 North Clark Street, Suite 2800  
Chicago, Illinois 60610-4764  
312.832.4364  
fentin@foley.com

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing documents was served on counsel for the respondents by electronic mail and first class mail delivery:

Michael L. Sibarium, Esq.  
Charles B. Klein, Esq.  
Winston & Strawn, LLP  
1400 L Street NW  
Washington, D.C. 20005

Duane M. Kelly, Esq.  
David Dahlquist, Esq.  
Winston & Strawn, LLP  
35 West Wacker Drive  
Chicago, IL 60601-9703

Thomas H. Brock, Esq.  
Complaint Counsel  
Federal Trade Commission  
Bureau of Competition  
Washington, D.C. 20580

and delivery of two copies to:

The Honorable Stephen J. McGuire  
Federal Trade Commission  
600 Pennsylvania Avenue  
Room 113  
Washington, D.C. 20580

1/14/05  
Date

Fredric J. Entin  
Fredric J. Entin  
Counsel for Rush University Medical  
Center

Exhibit A

Rush Presbyterian St. Luke Hospital Production to FTC<sup>2</sup>  
Third Party Notice List  
January 5, 2005

RX-0838	04/03/00	Managed Care Agreement between Aetna and Rush North Shore.	FTC-ROPH 0000002-63
RX-0929	08/31/00	Letter from Estes to Kniery cc: Elegen, Frankenback et al. re Rush System for Health termination of agreements for Copley, Oak Park, riverside and Rush-Presbyterian-St. Luke's	FTC-ROPH 0000662
RX-1242	03/01/02	Participating Hospital Agreement between Unicare and Rush System for Health	FTC-ROPH 0000778 - 0000791
RX-1051	03/01/01	Letter of Agreement between CCN Managed Care, Inc. and Rush System for Health	FTC-ROPH 0000989-1003
RX-0325	04/01/98	Hospital Contract Between Rush Presbyterian-St. Luke's Medical Center and CCN, Inc.	FTC-ROPH 0001004-05

<sup>2</sup> These documents bear a batestamp for "ROPH" which the FTC index shows refers to "Rush Oak Park Hospital."

**Exhibit B**

<b>Exhibit No.</b>	<b>Date</b>	<b>Description</b>	<b>Bates Range</b>
RX-0838	04/03/00	Managed Care Agreement between Aetna and Rush North Shore	FTC – ROPH 0000023-0000063
RX-0151	03/01/01	Letter of Agreement between CCN Managed Care, Inc. and Rush Systems for Health	FTC – ROPH 0000991-992
RX-0325	04/01/98	Hospital Contract between Rush Presbyterian – St. Luke’s Medical Center and CCN, Inc.	FTC – ROPH 0001004-05

Exhibit C

# WINSTON & STRAWN LLP

Electronic  
Letterhead

1400 L STREET, N.W. WASHINGTON DC 20005-3502  
202-371-5700

35 W. WACKER DRIVE  
CHICAGO IL 60601-9703  
312-558-5600

200 PARK AVENUE  
NEW YORK, NY 10166-4103  
212-294-0700

36TH FLOOR, 333 SOUTH GRAND AVE  
LOS ANGELES, CA 90071-1543  
213-615-1700

101 CALIFORNIA STREET  
SAN FRANCISCO CA 94111-5804  
415-561-1000

43 RUE DU RHONE  
1204 GENEVA, SWITZERLAND  
41-22-317-7575

21 AVENUE VICTOR HUGO  
75116 PARIS, FRANCE  
33-1-53-64-82-82

BUCKLEBURY HOUSE  
3 QUEEN VICTORIA STREET  
LONDON, ENGLAND EC4N 8HN  
44-20-748-0000

WRITER'S DIRECT DIAL  
(202) 371-5977  
cklein@winston.com

January 5, 2005

**BY FIRST CLASS MAIL**

Max Brown  
Legal Counsel  
Rush-Presbyterian-St. Luke's Medical Center  
1653 W. Congress Parkway  
Chicago, Illinois 60612

**Re: In the Matter of Evanston Northwestern Healthcare Corporation  
and ENH Medical Group, Inc., Docket No. 9315**

Dear Mr. Brown:

The FTC issued an administrative complaint against Evanston Northwestern Healthcare Corporation and ENH Medical Group, Inc. in February 2004. You represent several entities that had produced documents to the FTC several years ago. We recently determined that documents relevant to the upcoming trial were produced by Rush Presbyterian St. Luke's Hospital to the FTC.<sup>1</sup>

By this letter we are providing notice, pursuant 16 C.F.R. § 3.45(b), that Respondents intend to offer the documents shown on the enclosed List into evidence in the administrative trial in this matter, which is scheduled to begin on February 10, 2005. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted.

Under 16 C.F.R. § 4.10(g), you have "an opportunity to seek an appropriate protective or *in camera* order." Pursuant to the Federal Trade Commission's Rules, the Administrative Law Judge may order that material, whether admitted or rejected as evidence, be placed *in camera* only after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment. For the standards applicable to the granting of *in camera* treatment, please see 16 C.F.R. § 3.45(b) as well as the decisions of the Commission in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184,

<sup>1</sup> The FTC production index dated May 25, 2004, lacked sufficient detail to correctly identify all custodians; it was only after further research to try to trace the production source that we have identified your client as the probable custodian.



Exhibit C (cont'd)

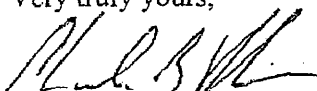
Max Brown  
January 5, 2005  
Page 2

1188 (1961); *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977); and *General Foods Corp.*, 95 F.T.C. 352, 355 (1980).

The Third Revised Scheduling Order dated October 12, 2004 set a deadline for filing motions for *in camera* treatment of any identified documents on January 4, 2005. We would consent to the late filing of any *in camera* motion you decide is necessary.

Feel free to call me if you have any questions.

Very truly yours,



Charles B Klein

Attachment

cc: Fredric J. Entin, Esquire ✓  
Michael L. Sibarium, Esq.  
Duane M. Kelley, Esq.  
David Dahlquist, Esq.  
Philip Eisenstat, Esq.  
Thomas H. Brock, Esq.