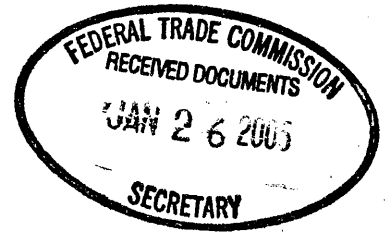


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
)

EVANSTON NORTHWESTERN HEALTHCARE)
CORPORATION,)
)

and)

ENH MEDICAL GROUP, INC.,)
Respondents.)

Docket No. 9315

**ORDER ON NON-PARTIES' MOTIONS FOR *IN CAMERA* TREATMENT
OF DOCUMENTS LISTED ON PARTIES' EXHIBIT LISTS**

I.

Pursuant to Commission Rule 3.45(b) and the Scheduling Order entered in this litigation, several non-parties have filed motions for *in camera* treatment of documents that the parties have listed on their exhibit lists as documents that might be introduced 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 Advocate Health Care (“Advocate”), on January 5, 2005, filed a motion seeking *in camera* treatment for twenty-two documents and a motion for extension seeking leave to file the *in camera* motion one day late. The motion for extension is **GRANTED**. Advocate seeks *in camera* treatment for an indefinite period or, in the alternative, for a period of not less than ten years. No opposition to the motion for *in camera* treatment has been filed.

Advocate's motion provides a declaration of Thomas J. Babbo, Assistant General Counsel for Advocate Health Care (“Babbo Declaration”). As described by the Babbo Declaration, the information for which *in camera* treatment is sought includes hospital agreements, managed care agreements, amendments to agreements, growth reports, and analyses of the Chicago hospital market. According to the Babbo Declaration, the information is material to Advocate's competitive position in the market; disclosure of the information would result in loss of business advantage and cause serious irreparable injury to Advocate; and the agreements and amendments are currently in effect.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment, based in significant part on the representation that the agreements are currently in effect. Accordingly, Advocate's motion is **GRANTED**. *In camera* treatment, for a period of ten years, to expire on

February 1, 2015, is granted to:

RX 630 (AHC 1541 to 60),
RX 1507 (AHC 727 to 28),
RX 1053 (AHC 363 to 73),
RX 1095 (AHC 374 to 384),
RX 1141 (AHC 385 to 395),
RX 928 (AHC 1088 to 1128),
RX 1718 (AHC 1197 to 1237),
RX 76 (ALGH 1676),
RX 195 (ALGH 1729 to 30),
RX 233 (ALGH 1675 to 76),
RX 1328 (ALGH 556 to 588),
RX 1988 (ALGH 1505),
RX 1334 (ALGH 540 to 588),
RX 1173 (ALGH 1264 to 1336),
RX 72 (ALGH 1439 to 60),
RX 9 (ALGH 1461 to 88),
RX 16 (ALGH 1492 to 94),
RX 32 (ALGH 1495 to 99),
RX 39 (ALGH 1500 to 04),
RX 297 (ALGH 1505 to 29),
RX 36 (ALGH 1619 to 66),
RX 1036 (ALGH 606 to 22).

III.

Non-party Blue Cross Blue Shield of Illinois (“BCBSI”), on January 10, 2005, filed a motion seeking *in camera* treatment for thirty-four documents and at least sixteen data disks. BCBSI seeks *in camera* treatment for an indefinite period or, in the alternative, no less than ten years. No opposition to the motion for *in camera* treatment has been filed.

BCBSI’s motion provides the declaration of Joseph Arango, Senior Director of Provider Contracting and Strategy of Blue Cross Blue Shield of Illinois (“Arango Declaration”). As described by the Arango Declaration, the information for which *in camera* treatment is sought is current hospital service agreements and amendments to agreements; correspondence regarding the agreements; internal pricing analysis, contract negotiation analysis and management strategy; and computer data files. According to the Arango Declaration, the information for which *in camera* treatment is sought is maintained in confidence and its disclosure would cause serious competitive injury to BCBSI. The motion properly includes copies of the documents, however, it fails to provide copies of the data disks. To allow a determination of whether the data disks qualify for *in camera* treatment, BCBSI must provide copies of the data disks.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. A determination regarding the data disks could not be made. Accordingly, BCBSI's motion is **GRANTED in part and DENIED WITHOUT PREJUDICE in part**. BCBSI has until February 2, 2005 to file a renewed motion for *in camera* treatment of the data disks which includes copies of the disks. Prior to filing such a motion, BCBSI shall contact the parties to determine whether the parties still intend to introduce the data disks into evidence. *In camera* treatment, for a period of ten years, to expire on February 1, 2015, is granted to:

RX 1431 (BCBSI-ENH 17002 to 05),
RX 240 (BCBSI 10199 to 203),
RX 980 (BCBSI 6825 to 26),
RX 1260 (BCBSI 3612 to 14),
RX 255 (BCBSI 6818 to 24),
RX 982 (BCBSI 3615 to 16),
RX 750 (BCBSI 59 to 64),
RX 1215 (BCBSI 49 to 52),
RX 1013 (BCBSI 3194 to 203),
RX 1012 (BCBSI 5775 to 76),
RX 1011 (BCBSI 5705 to 25; 5728),
RX 851 (BCBSI 762 to 66),
RX 1259 (BCBSI 767),
RX 264 (BCBSI 5412 to 18),
RX 502 (BCBSI 5476),
RX 1258 (BCBSI 5439 to 40),
RX 1325 (BCBSI 5444 to 73),
RX 87 (BCBSI-ENH 2535 to 39),
RX 918 (BCBSI 4002 to 06),
RX 917 (BCBSI 6094 to 95),
RX 876 (BCBSI 4068 to 70),
RX 733 (BCBSI 6605),
RX 1517 (BCBSI-ENH 6525 to 84),
RX 1522 (BCBSI-ENH 6517 to 23),
RX 817 (BCBSI 11198 to 200),
RX 1222 (BCBSI 1636),
RX 1221 (BCBSI 1635),
RX 1369 (BCBSI 7723 to 24),
RX 1372 (BCBSI 9126 to 27),
RX 319 (BCBSI 25016),
RX 1153 (BCBSI 8648 to 49),
RX 1766 (BCBSI 1581 to 82),
RX 1368 (BCBSI-ENH 5178 to 88),
RX 1351 (BCBSI-ENH 5228 to 30).

IV.

Non-party CIGNA Healthcare of Illinois, Inc. ("CIGNA"), on January 4, 2005, filed a motion seeking *in camera* treatment for fourteen documents. CIGNA seeks *in camera* treatment for a period of five years. No opposition to the motion for *in camera* treatment has been filed.

CIGNA's motion provides a declaration of Tyler Norton, Assistant Vice President, Contracting for CIGNA ("Tyler Declaration"). As described by the Tyler Declaration, the information for which *in camera* treatment is sought falls into three categories: contracts and amendments, addendums, and exhibits between CIGNA and health care providers; correspondence between CIGNA and third parties that contains current, secret, and competitive fee, rate, and reimbursement information; and internal strategic and marketing plans created by CIGNA. As described by the Tyler Declaration, CIGNA's competitors could use such information to CIGNA's competitive disadvantage and for market leverage, as could other parties with whom CIGNA contracts.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, CIGNA's motion is **GRANTED**. *In camera* treatment, for a period of five years, to expire on February 1, 2010, is granted to:

RX 1015 (CIG/IL 110262 to 329),
RX 277 (CIG/IL 150348 to 74),
RX 252 (CIG/IL 150429 to 35),
RX 142 (CIG/IL 170754 to 66),
RX 1228 (CIG/IL 200240 to 55),
RX 922 (CIG/IL 60218 to 19),
RX 923 (CIG/IL 71537 to 41),
RX 959 (CIG/IL 90267 to 68),
RX 1220 (CIG/IL 120108 to 12),
RX 1075 (CIG/IL 200374 to 76),
RX 1482 (CIG/ENH 599 to 716),
RX 882 (CIG/IL 71467 to 68),
RX 861 (CIG/IL 120161),
RX 1554.

V.

Non-party Condell Medical Center ("Condell"), on January 4, 2005, filed a motion seeking *in camera* treatment for portions of two documents. Condell seeks *in camera* treatment for a period of three years. No opposition to the motion for *in camera* treatment has been filed.

Condell's motion provides the declaration of Van I. Hanover, Executive Vice President, Finance, of Condell Medical Center ("Hanover Declaration"). As described by the Hanover Declaration, the information for which *in camera* treatment is sought is portions of confidential planning documents, the disclosure of which would likely result in serious competitive injury to Condell.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Condell's motion is **GRANTED**. *In camera* treatment, for a period of three years, to expire on February 1, 2008, is granted to:

RX 997-37 to 39 (CMC 153 to 55),
RX 997-42 (CMC 158),
RX 997-46 (CMC 162),
RX 997-52 to 61 (CMC 168 to 77),
RX 1521-2 to 7 (CMC 19875 to 880).

VI.

Non-party Great-West Healthcare of Illinois, Inc. ("Great-West Healthcare"), on December 30, 2004 filed a motion seeking an extension to file its *in camera* motion. The motion for an extension is **GRANTED**. On January 6, 2005, Great-West Healthcare filed a motion seeking *in camera* treatment for eight documents plus portions of six other documents. Great-West Healthcare seeks *in camera* treatment for a period of five years. No opposition to the motion for *in camera* treatment has been filed.

Great-West Healthcare's motion provides the affidavit of William Patten, Director of Network Development for the Midwest Region of Great-West Life & Annuity Insurance Company ("Patten Declaration"). As described by the Patten Declaration, the information for which *in camera* treatment is sought reveals rates which Great-West Healthcare pays to health care providers and Great-West Healthcare's marketing strategies, disclosure of which would cause serious competitive injury to Great-West Healthcare.

A review of the affidavit in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Great-West Healthcare's motion is **GRANTED**. *In camera* treatment, for a period of five years, to expire on February 1, 2010, is granted to:

RX 1681 (GWL 31594 to 31622),
RX 1836 (GWC 25193 to 200),
RX 1433 and RX 1436 (GWL 4587 to 88),
RX 1434 and RX 1437 (GWL 4591 to 92),
RX 1435 and RX 1438 (GWL 4595 to 96),

RX 222, pp. 16, 18, 19 (GWL 3277, 3279, 3280),
RX 223, pp. 17, 18 (GWL 3988, 3989),
RX 1187 and RX 1171, pp. 15, 16 (GWL 26, 27),
RX 749, pp. 15, 16 (GWL 484, 485),
RX 24, pp. 17, 18 (GWL 521, 522).

VII.

Non-party HFN, Inc. ("HFN"), on January 5, 2005, filed a motion seeking *in camera* treatment for three documents. HFN seeks *in camera* treatment for an indefinite period. No opposition to the motion for *in camera* treatment has been filed.

HFN's motion provides the declaration of Ronald Craven, Vice President of Provider Network Management for HFN, Inc. ("Craven Declaration"). As described by the Craven Declaration, the information for which *in camera* treatment is sought is portions of confidential planning documents, the disclosure of which would likely result in serious competitive injury to HFN.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment, although not for an indefinite period. Accordingly, HFN's motion is **GRANTED in part and DENIED in part**. *In camera* treatment, for a period of ten years, to expire on February 1, 2015, is granted to: RX 1803 (HFN 515); RX 1830 (HFN 516 to 540); RX 1840 (HFN 68 to 74).

VIII.

Non-party Humana, Inc. ("Humana"), on January 4, 2005, filed a motion seeking *in camera* treatment for ninety documents. Humana seeks *in camera* treatment for an indefinite period or, in the alternative, for a period of at least ten years. No opposition to the motion for *in camera* treatment has been filed.

The declaration of John Paul Maxwell, Vice President of Network Management, attached to the motion, states that these documents contain sensitive and confidential information, the disclosure of which would result in competitive injury to Humana. However, the declaration fails to discuss each exhibit and fails to indicate whether the substantial number of agreements and amendments, many of which are dated over ten years ago, are still in effect. Further, Humana has not met the heavy burden of establishing the unusual circumstances that may warrant indefinite *in camera* treatment for its confidential materials. Accordingly, Humana's motion is **DENIED WITHOUT PREJUDICE**.

Humana has until February 2, 2005 to file a renewed motion for *in camera* treatment that is more narrowly tailored to request *in camera* treatment for only that information that is sufficiently secret and material to Humana's current competitive position. Any renewed request

for *in camera* treatment shall include copies of all documents, including copies of data disks if *in camera* treatment is requested for the information on the disk.

IX.

Non-party Illinois Department of Central Management Services (“CMS”), on January 3, 2005, filed a motion seeking an extension of time to file its motion for *in camera* treatment. The motion for extension is **GRANTED**. On January 11, 2005, CMS filed a motion seeking *in camera* treatment for six documents. CMS seeks *in camera* treatment for an indefinite period. No opposition to the motion for *in camera* treatment has been filed.

The declaration of Daniel S. Fewkes, Deputy General Counsel of Illinois Department of Central Management Services (“Fewkes Declaration”), attached to the motion, states that the documents for which *in camera* treatment is sought contain sensitive and confidential information. However, the Fewkes Declaration fails to indicate whether the agreements, some of which are more than five years old, are still in effect. Further, CMS has not met the heavy burden of establishing the unusual circumstances that may warrant indefinite *in camera* treatment for its confidential materials.

A review of the declaration in support of the motion and the documents reveals that some of the information sought to be protected meets the standards for *in camera* treatment. Accordingly, CMS’s motion is **GRANTED in part and DENIED WITHOUT PREJUDICE in part**. *In camera* treatment, for a period of ten years, to expire on February 1, 2015, is granted to: CX 5124 (FTC-CMS-95 to 124); CX 5127 (FTC-CMS-125 to 154); CX 5128 (FTC-CMS-155 to 184); and CX 5129 (FTC-CMS-185 to 214). CMS has until February 2, 2005 to file a renewed motion for *in camera* treatment for CX 5715 and CX 5125.

X.

Non-party Northwestern Memorial Hospital (“NMH”), on January 4, 2005, filed a motion seeking *in camera* treatment for portions of two pages of one document. NMH seeks *in camera* treatment for a period of four years. No opposition to the motion for *in camera* treatment has been filed.

NMH’s motion provides the declaration of Gary J. Fennessy, Vice President of Financial Affairs at Northwestern Memorial Hospital (“Fennessy Declaration”). As described by the Fennessy Declaration, the information for which *in camera* treatment is sought include the inpatient and outpatient rates paid during the years 2003 through 2005, the disclosure of which would cause a direct, serious competitive injury to NMH.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, NMH’s motion is **GRANTED**. *In camera* treatment, for a period of four years, to expire on

February 1, 2009, is granted to: RX 1432 (FTC-NB-13-354 to 355 and NMH 87 to 88).

XI.

Non-party Private Healthcare Systems, Inc. ("PHCS"), on January 4, 2005, filed a motion seeking *in camera* treatment for twenty-three documents and a motion for extension seeking an extension to file an *in camera* motion for one additional document. The motion for extension is **GRANTED**. On January 7, 2005, PHCS filed its motion seeking *in camera* treatment of one additional document. PHCS seeks *in camera* treatment for a period of twenty years except for CX 5068 for which PHCS seeks *in camera* treatment for a period of ten years. No opposition to the motions for *in camera* treatment has been filed.

PHCS's motions provide 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 motions and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment, although not for the time period requested. Accordingly, PHCS's motions are **GRANTED in part and DENIED in part**. *In camera* treatment, for a period of ten years, to expire on February 1, 2015, is granted to:

RX 986 (PHCS 1693 to 94),
RX 830 (PHCS 2741 to 42),
RX 279 (PHCS 2761),
RX 1356 (PHCS 2901 to 02),
RX 776 (PHCS 3069 to 75),
RX 813 (PHCS 3079 to 80),
RX 831 (PHCS 3081),
RX 308 (PHCS 3116),
RX 1503 (PHCS 3648 to 67),
RX 804 (PHCS 4550 to 02),
RX 805 (PHCS 4553),
RX 1395 (PHCS 4582 to 86),
RX 772 (PHCS 7530),
RX 754 (PHCS 7582 to 88),
RX 1685-001 to 03 (PHCS CD 8212),
RX 1644-001 to 03 (PHCS CD 8215),
RX 1659-001 to 02 (PHCS CD 8215),
RX 1489-001 to 10 and RX 1628-001 to 10 (PHCS CD 8216),
RX 1632-001 to 07 (PHCS CD 8216),

RX 1670-001 to 09 (PHCS CD 8216),
RX 1673-001 to 05 (PHCS CD 8216),
RX 1688-001 to 05 (PHCS CD 8216),
CX 5068-001 to 37.

XII.

Non-party Resurrection Health Care (“Resurrection”), on January 4, 2005, filed a motion seeking *in camera* treatment for five documents. Resurrection seeks *in camera* treatment for a period of five years. No opposition to the motion for *in camera* treatment has been filed.

Resurrection’s motion provides the declaration of Joseph L. Smith, System Director of Managed Care for Resurrection Health Care (“Smith Declaration”). As described by the Smith Declaration, the information for which *in camera* treatment is sought is contracts or amendments to contracts with health insurers, the disclosure of which would likely result in serious harm to Resurrection’s ability to compete.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, Resurrection’s motion is **GRANTED**. *In camera* treatment, for a period of five years, to expire on February 1, 2010, is granted to:

RX 1213 (RHC 1024 to 1033),
RX 1214 (RHC 1034 to 1043),
RX 1624 (RHC 980 to 983),
RX 1478 (RHC 9405 to 9423),
RX 1330 (RHC 9484 to 9493).

XIII.

Non-party Rush North Shore Medical Center (“RNSMC”), on January 4, 2005, filed a motion seeking *in camera* treatment for fourteen documents. RNSMC seeks *in camera* treatment for an indefinite period. No opposition to the motion for *in camera* treatment has been filed.

RNSMC’s motion provides the declaration of Ann K. Ford, General Counsel and Senior Vice President of Rush North Shore Medical Center (“Ford Declaration”). As described by the Ford Declaration, the information for which *in camera* treatment is sought is: a hospital services agreement currently in effect; business plan including projections through 2007; hospital chart of rates; capital expenditure information from 2002 and 2003; environmental assessment of health care trends; recent business plans; strategic repositioning assessment; board update report including RNSMC’s strategic analysis; hospital pricing study; medical staff development plan; marketing communications recommendations report; and capital budget projections for 2005 and 2003-2004. According to the Ford Declaration, disclosure of this information would likely result

in a clearly-defined, serious injury and would result in competitive injury to RNSMC.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. However, the information does not meet the standards for indefinite *in camera* treatment. Accordingly, RNSMC's motion is **GRANTED in part and DENIED in part**. *In camera* treatment, for a period of ten years, to expire on February 1, 2015, is granted to:

RX 270 (ENH-RNSMC 303 to 314),
RX 391 (FTC-RNSMC 506 to 519),
RX 1050 (FTC-RNSMC 102 to 104 and 112 to 116),
RX 1204 (ENH-RNSMC 1308),
RX 1205 (FTC-RNSMC 330 to 426),
RX 1270 (FTC-RNSMC 490 to 494),
RX 1311 (ENH-RNSMC 1006 to 1112),
RX 1392 (ENH-RNSMC 782 to 820),
RX 1415 (ENH-RNSMC 1307),
RX 1510 (FTC 505 to 511),
RX 1557 (ENH-RNSMC 625 to 672),
RX 1564 (ENH-RNSMC 1191 to 92; 1194 to 1239),
RX 1611 (ENH-RNSMC 1305),
RX 1612 (ENH-RNSMC 1306).

XIV.

Non-party Rush University Medical Center ("RUMC"), on January 18, 2005, filed a motion seeking *in camera* treatment for three documents which Respondents indicated, on January 5, 2005, that they intended to introduce as exhibits in this matter. RUMC seeks *in camera* treatment for an indefinite period. No opposition to the motion for *in camera* treatment has been filed.

RUMC's motion provides the declaration of Brent J. Estes, Vice President, Managed Care/Programs and Services of Rush University Medical Center ("Estes Declaration"). As described by the Estes Declaration, the information for which *in camera* treatment is sought is sensitive and confidential information, disclosure of which would result in competitive injury to RUMC.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. However, the information does not meet the standards for indefinite *in camera* treatment. Accordingly, RUMC's motion is **GRANTED in part and DENIED in part**. *In camera* treatment, for a period of ten years, to expire on February 1, 2015, is granted to: RX 838 (FTC-ROPH 23 to 63); RX 151 (FTC-ROPH 991 to 92); RX 325 (FTC-ROPH 1004 to 05).

XV.

Non-party Swedish Covenant Hospital (“SCH”), on January 4, 2005, filed a motion seeking *in camera* treatment for twenty-five documents. No opposition to the motion for *in camera* treatment has been filed.

The motion does not attach copies of the documents for which *in camera* treatment is sought. The motion is not supported by an affidavit or declaration of an individual within the company who has reviewed the documents to determine if they are sufficiently secret and material to the applicant’s business that disclosure would result in serious competitive injury. The motion does not specify a time period for which *in camera* treatment is sought. All of this information must be provided to support an order granting *in camera* treatment. Accordingly, the motion is **DENIED WITHOUT PREJUDICE**.

SCH has until February 2, 2005 to file a renewed motion for *in camera* treatment that is supported by an appropriate affidavit or declaration, attaches copies of documents, and indicates the time period for which *in camera* treatment is sought.

XVI.

Non-party UniCare Health Plans of the Midwest, UniCare Health Insurance Company of the Midwest, and UniCare Life & Health Insurance Company (“UniCare”), on January 4, 2005, filed a motion seeking *in camera* treatment for twenty-seven documents. UniCare seeks *in camera* treatment for an indefinite period or, in the alternative, for a period of at least ten years. No opposition to the motion for *in camera* treatment has been filed.

The declaration of Lenore Holt-Darcy, Regional Vice-President of Network Services for UniCare, attached to the motion, states that these documents contain sensitive and confidential material, the disclosure of which would result in competitive injury to UniCare. However, a review of the documents submitted with the motion reveals that some of the documents, such as RX 179 and RX 665, do not meet the standards for *in camera* treatment. In addition, the declaration fails to indicate whether the substantial number of agreements and amendments, many of which are dated over ten years ago, are still in effect. Further, UniCare has not met the heavy burden of establishing the unusual circumstances that may warrant indefinite *in camera* treatment for its confidential materials. Accordingly, UniCare’s motion is **DENIED WITHOUT PREJUDICE**.

UniCare has until February 2, 2005 to file a renewed motion for *in camera* treatment that is more narrowly tailored to request *in camera* treatment for only that information that is sufficiently secret and material to UniCare’s current competitive position. Any renewed request for *in camera* treatment shall be tabbed, shall include both exhibit numbers and Bates stamp ranges, and shall indicate where multiple exhibit numbers refer to the same document, such as CX 2203 and CX 5909.

XVII.

Non-party United HealthCare of Illinois, Inc. ("United"), on January 4, 2005, filed a motion seeking *in camera* treatment for fifty-two documents and a motion seeking an extension to file an *in camera* motion for one additional document. The motion for extension is **GRANTED**. On January 21, 2005, United filed its motion seeking *in camera* treatment of one additional document. United seeks *in camera* treatment for a period of five years. No opposition to the motion for *in camera* treatment has been filed.

United's motion provides a declaration of Jillian Foucré, Regional Vice President for United Health Networks for the Central Region ("Foucré Declaration"). As described by the Foucré Declaration, the information for which *in camera* treatment is sought includes contracts, pricing, current hospital or physician provider information, and United's strategic planning documents. As described by the Foucré Declaration, this information has been maintained in confidence and its disclosure would put United at a competitive disadvantage.

A review of the declaration in support of the motion and the documents reveals that the information sought to be protected meets the standards for *in camera* treatment. Accordingly, United's motion is **GRANTED**. *In camera* treatment, for a period of five years, to expire on February 1, 2010, is granted to:

RX 1140 (UHC 14508 to 11),
RX 1223 (UHC 15040 to 41),
RX 1290 (UHC 14984 to 5),
RX 1072 (UHC 9154),
RX 575 (UHC 9186 to 8),
RX 1073 (UHC 12552 to 3),
RX 1286 (UHC 14995 to 6),
RX 1282 (UHC 14998 to 9),
RX 1137 (UHC 15052 to 54),
RX 1107 (UHC 15086),
RX 995 (UHC 15836 to 7),
RX 1103 (UHC 16735 to 36),
RX 1193 (UHC 16901),
RX 1273 (UHC 17375 to 6),
RX 1034 (UHC 17779),
RX 1304 (UHC 24196 to 201),
RX 1113 (UHC 25770 to 1),
RX 1243 (UHC 26990 to 7018),
RX 1288 (UHC 15709 to 11),
RX 1527 (UHCENH 854),
RX 1401 (UHCENH 913 to 15),
RX 1399 (UHCENH 939 to 41),

RX 1397 (UHCENH 1075 to 76),
RX 1386 (UHCENH 1080 to 81),
RX 1355 (UHCENH 1089),
RX 1353 (UHCENH 1090),
RX 1585 (UHCENH 1196 to 97),
RX 742 (UHCENH 2911 to 40),
RX 424 (UHCENH 3324 to 27),
RX 1363 (UHCENH 3341 to 43),
RX 1404 (UHCENH 3349 to 51),
RX 1387 (UHCENH 3354),
RX 1324 (UHCENH 3507 to 8),
RX 1320 (UHCENH 3509 to 10),
RX 1319 (UHCENH 3511 to 13),
RX 1321 (UHCENH 3514 to 16),
RX 736 (UHCENH 3517),
RX 422 (UHCENH 3593 to 601; 3603 to 07),
RX 1537 (FTC 851 to 53),
RX 1542 (FTC 854 to 59),
RX 992 (UHC 14386-89),
RX 1005 (UHCENH 2303 to 50),
RX 1365 (UHCENH 2526 to 27),
RX 1383 (UHCENH 2528 to 29),
RX 1488 (UHCENH 2610 to 16),
RX 1417 (UHCENH 3146),
RX 737 (UHCENH 3184 to 86),
RX 1549 (UHCENH 3205 to 6),
RX 738 (UHCENH 3312 to 16),
RX 1208 (UHCENH 3377 to 421),
RX 739 (UHCENH 3378),
RX 573 (UHCENH 3559 to 61),
CX 3020 (data disk).

XVIII.

Non-party Louis A. Weiss Memorial Hospital (“Weiss”), on January 4, 2005, filed a motion seeking an extension of time to file its motion for *in camera* treatment. The motion for extension is **GRANTED**. On January 14, 2005, Weiss filed a motion seeking *in camera* treatment for two documents. Weiss seeks *in camera* treatment for an indefinite period or, in the alternative, for a period of five years. No opposition to the motion for *in camera* treatment has been filed.

Weiss’s motion provides the affidavit of Kevin Yusman, counsel representing Weiss. However, the motion was not supported by an affidavit or declaration of an individual within the


company who had reviewed the documents. Moreover, the motion does not indicate the exhibit numbers or Bates ranges of the documents for which *in camera* treatment is sought and does not include a proposed Order. Accordingly, Weiss's motion is **DENIED WITHOUT PREJUDICE**.

Weiss has until February 2, 2005 to file a renewed motion for *in camera* treatment that is supported by an appropriate affidavit or declaration and includes both exhibit numbers and bates stamp ranges.

XIX.

Each non-party that has documents or information that have been granted *in camera* treatment by this Order shall inform its testifying current or former employees that *in camera* treatment has been extended to the material described in this Order. At the time that any documents that have been granted *in camera* treatment are offered into evidence or before any of the information contained therein is referred to in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session. *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:


Stephen J. McGuire
Chief Administrative Law Judge

Date: January 26, 2005