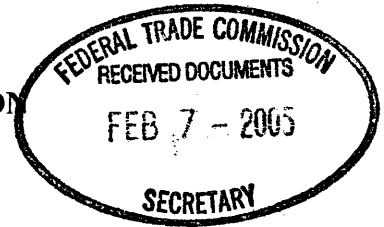


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the matter of)
)
)

Evanston Northwestern Healthcare Corporation,)
a corporation, and)

ENH Medical Group, Inc.,)
a corporation.)
_____)

Docket No. 9315

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
ENH'S MOTION FOR *IN CAMERA* TREATMENT
OF CERTAIN EXHIBITS

Pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), Respondent Evanston Northwestern Healthcare, Inc. ("ENH") submits this supplemental memorandum in support of its motion for an order directing *in camera* treatment of certain documents containing highly confidential information produced in this proceeding. This memorandum incorporates by reference Respondents' Memorandum of Law in Support of Their Motion For *In Camera* Treatment of Certain Exhibits. ("Memorandum of Law")

This memorandum is necessary to supplement the Memorandum of Law filed January 4, 2005, for the following reasons:

- 1) Since January 4, 2005, both parties have eliminated many trial exhibits from their original lists. The revised lists were submitted to the Court on February 2, 2005.
- 2) A small number of new exhibits were added by each party. These exhibits were not addressed in the Memorandum of Law.

3) The Court has requested that the parties indicate the sealing period requested for each exhibit, so this new information is being provided to the court.

Copies of all exhibits listed on Supplemental Exhibits A and B will be delivered to the Court on February 4, 2005.

Argument

The Court instructed Respondent's counsel and Complaint Counsel to divide trial exhibits into two lists--an "A-List" and a "B-List." A-List exhibits are those the parties presently intend to use at trial. B-List exhibits are those they may use at trial if the need arises. Attached to this memorandum is a Supplemental Exhibit A, which lists all A-List trial exhibits for which ENH is seeking *in camera* protection. Also attached is a Supplemental Exhibit B that lists all B-List trial exhibits for which ENH is seeking *in camera* protection.

As discussed in the Memorandum of Law, the documents on both of these exhibit lists are highly sensitive and proprietary in nature and, if made public, would not only cause irreparable harm to ENH, but also would likely result in an overall loss of competition. ENH requests an order requiring these materials be used at the hearing only *in camera* and maintained under seal for the time periods specified in the Supplemental Exhibits A and B.

A. Information Categories Needing *In Camera* Protection Have Not Changed

The exhibits requiring *in camera* treatment are those that, if made public, would provide private payors and Respondents' competitors with critical knowledge of confidential information proprietary to ENH and ENH Medical Group, as well as confidential patient information. These exhibits at issue still fall into the following categories of information:

- i. [REDACTED];
- ii. REDACTED;

- iii. REDACTED;
- iv. REDACTED;
- v. REDACTED; and
- vi. REDACTED]

Supplemental Exhibits A and B include a field assigning one of the above categories for the sensitive information found in each exhibit. The new exhibits added by each party for which Respondent is seeking *in camera* treatment did not alter or add new categories to the categories discussed in the original Motion for *In Camera* Treatment of Certain Exhibits with supporting Memorandum of Law.¹ The inclusion of the category field is designed to aid the Court in making its determinations for *in camera* protection of each listed exhibit. Further, these Supplemental Exhibits indicate the precise page or pages within each exhibit that contains the sensitive information. The original Declarant who provided testimony in support of protecting a specific category of information, with examples, are also listed for the convenience of the Court.

B. Respondent Still Seeks Protection of All Information Related to Current Fee Schedules and Prices

The original Memorandum of Law discussed the sensitivity of information related to current pricing information. This category includes not only the most current rate agreements and amended rate schedules for each provider, but also internal pricing calculations and comparisons, and the ongoing contract team communications to negotiate each price adjustment that relates back to the underlying agreement. Disclosure of this related rate information or the internal comparisons and calculations used for negotiations would allow

¹ Most of the new exhibits are similar to exhibits already listed on the original list with a few exceptions: Notes and tables prepared by Expert witness Mark Chassin; Expert Rebuttals recently filed; and RX 2005 which contains recent facility improvement information affecting staff performance or patient care.

Respondent's competitors to easily determine current increased prices injuring Respondent and imperiling future negotiations. Brian Washa's Supplemental Declaration is attached as Exhibit C. Mr. Washa confirms that the Stipulation of Provider Agreements filed on January 18, 2005, accurately reflects all agreements for each provider as of July, 2004. The documents on Supplemental Exhibits A and B which fall into the "negotiations" or "pricing" categories, all relate to the current provider agreements included in the Stipulation.

C. Sealing Periods for Each Category of Sensitive Information Now Appears on Each List

Supplemental Exhibits A and B now contain a new field that denotes the requested specific sealing periods for the sensitive information discussed in the Memorandum of Law. ENH now requests the following revisions to these sealing periods: for the category of information involving staff performance and patient information, and for pricing and negotiations information. ENH now requests a ten year sealing period rather than an indefinite time period for information related to performance or patient information. The basis for this request is discussed in the Memorandum of Law. ENH now requests a five year sealing period, rather than until the end of each contract term, for pricing and negotiations information. Since the rate terms in the provider agreements rate terms are not all negotiated at one time, and the underlying agreement terms may be renewed rather than renegotiated, the five year sealing period can be administered more efficiently.

D. Treatment of Investigational Hearing Transcripts or Deposition Transcripts

The parties are currently negotiating the designation of deposition and investigational hearing testimony that may or may not be admitted as evidence during trial. Complaint Counsel has not included designations exchanged between the parties thus far on its

Revised Proposed Exhibit List, indicating instead that it will supplement its List "if necessary, at the time" that negotiations are completed. ENH reserves the right to file a supplemental motion for *in camera* treatment of such transcript designations once negotiations between the parties are completed.

CONCLUSION

For the foregoing reasons, ENH requests that the Court grant *in camera* treatment to the exhibits listed on the Supplemental Exhibits A and Exhibit B attached hereto.

Dated: February 3, 2005

Respectfully Submitted,


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Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2005, copies of the public version of the foregoing ENH's Supplemental Memorandum of Law in Support of Their Motion for *In Camera* Treatment of Certain Exhibits was served (unless otherwise indicated) by email and first class mail, postage prepaid, on:

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Pamela A. Rons

SUPPLEMENTAL EXHIBIT A
 LIST OF TRIAL EXHIBITS FOR RESPONDENT'S MOTION FOR *IN CAMERA* TREATMENT
 OF CERTAIN TRIAL EXHIBITS THAT WILL BE USED DURING TRIAL

Exhibit No.	Date	Description	Beginning Bates Number	Ending Bates Number	Pages Needing Protection	Category	Declarant	Sealed Time Period
REDACTED								

SUPPLEMENTAL EXHIBIT B
LIST OF TRIAL EXHIBITS FOR RESPONDENT'S MOTION FOR *IN CAMERA* TREATMENT
OF CERTAIN TRIAL EXHIBITS THAT MAY BE USED

Exhibit No.	Date	Description	Beginning Bates Number	Ending Bates Number	Pages Needing Protection	Category	Declarant	Sealed Time Period
REDACTED								