



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

\_\_\_\_\_)  
In the matter of )  
)  
Evanston Northwestern Healthcare )  
Corporation, ) Docket No. 9315  
a corporation, and )  
)  
ENH Medical Group, Inc., )  
a corporation. )  
)  
\_\_\_\_\_)

**COMPLAINT COUNSEL'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS ISSUED TO  
EVANSTON NORTHWESTERN HEALTHCARE**

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.37, Complaint Counsel hereby request that Respondent Evanston Northwestern Healthcare Corporation (hereinafter "the company" or "ENH") produce all documents and other things responsive to the following requests, within its possession, custody, or control within twenty days of service of this request, in accordance with the Definitions and Instructions set forth below.

**SPECIFICATIONS**

In accordance with the definitions and instructions below, please submit:

1. All documents that have not been previously produced, including documents that came into existence after October 1, 2002, that are responsive to the Subpoena Duces Tecum issued in FTC File No. 011-0234, dated June 25, 2002.
2. All documents relating to:
  - a. The entity relationship diagram (ERD), relational database schema, or similar diagram showing all data collected, archived, maintained, and/or used by the company relating to company dollar sales, unit sales, pricing, costs, discounts, allowances, third-party payor billings and receivables, promotions, sales, customers, products, and inventories, including, but not limited to, documents showing (i) all entities, attributes, and

interrelationships for relevant flat-file and relational databases; and (ii) definitions of all elements;

- b. all calendar year reports of disaggregated financial and utilization data for each department at each ENH hospital (Evanston Hospital, Highland Park Hospital, Glenbrook Hospital) including, but not limited to, general medical and surgical, cardiac surgery, obstetrics, pediatrics, pediatric surgery, oncology, neonatology, radiology, anaesthesiology, ophthalmology, laboratories, pharmacy; emergency services, and outpatient services; and
- c. all monthly reports analyzing, for each department at each ENH hospital, (i) dollar costs by category including but not limited to physician salaries, nursing staff salaries, benefits, contract labor costs, costs of supplies, equipment costs, insurance costs, and any other operating expense item, (ii) FTEs, (iii) admissions and discharges, average length of stay and patient days, and outpatient and emergency room visits, physician encounters, procedures or treatments, and (iv) any other item(s) relevant to the determination of unit cost.

3. All documents relating to:

- a. wage and benefit plans including but not limited to regular pay, overtime pay, shift pay, bonuses, temporary worker pay, executive compensation, incentive compensation and performance awards, severance pay, retention plans, health insurance, pension plans, long and short term disability, life insurance and AD&D insurance; financial risk, bonuses or performance goals of individual physicians; changes to any of the foregoing and the reasons for such changes; and the relevant cost implications of such changes;
- b. all pay classifications, including corresponding wage rates and number of employees, for all hourly, salaried and management employees;
- c. the determination of salaries, bonuses, performance incentives, benefits, and other compensation for ENH executives and physician employees (including W-2 forms and similar documents);
- d. comparisons of employee wages, salaries, and benefits between ENH hospitals (including HPH) and other hospitals, as well as nursing and other staff turnover levels, and

4. All documents relating to any communication or meeting between:

- a. the company and HPH concerning the merger of the hospitals; and

b. the company or HPH and Bain and Company.

5. All documents, from 1988 to the present, all documents relating to the Northwestern Healthcare Network.

6. All annual payment logs or similar documents relating to third-party payer reimbursement to the Company and each of its hospitals, including but not limited to, summaries stating separately for inpatient and outpatient services, the number of cases, units of output (e.g. inpatient days, patient encounters, or tests), the amount charged and paid after allowances, and measure of case mix complexity.

7. All documents (including assessments of individual cases, but excluding any individual patient or medical records) relating to any evaluation of the quality of patient care provided at any ENH hospital, after ENH's acquisition of HPH.

#### DEFINITIONS

A. The term "the company" or "ENH" means Evanston Northwestern Healthcare Corp., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between ENH and any other person.

B. The term "HPH" means Highland Park Hospital (Highland Park, Illinois), its domestic and foreign parents (including but not limited to Lakeland Health Services), predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between HPH and any other person.

C. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the Company's possession, custody or control. The term "documents" includes electronic mail and drafts of documents, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in the possession, custody or control of the Company. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems; such computer files should be printed and produced in hard copy (unless otherwise required by a particular specification or subspecification, or agreed to by Commission representatives), together with instructions and all other materials necessary to use or interpret the data (including, but not limited to, the information specified in Instruction V(2) below).

D. The term "person" includes the company and means any natural person, corporate

entity, partnership, association, joint venture, government entity, or trust.

E. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

F. The terms "and" and "or" have both conjunctive and disjunctive meanings.

G. The term "health plan" means any entity that contracts for the payment of health services rendered by ENH, HPH or any other general acute care hospital. This includes, but is not limited to, health maintenance organizations, preferred provider organizations, managed health care plans, point-of-service plans, self-insured health benefit plans, employer or union health benefit plans, Medicare, Medicaid, CHAMPUS, or private or governmental health care plans or insurance of any kind.

H. The term "physician organization" means any entity that directly or indirectly provides, or through which physicians contract to provide, physician services to health plans, including but not limited to solo or group medical practices, individual practice associations, medical foundations, and physician-hospital organizations.

### INSTRUCTIONS

I. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents prepared or received since January 1, 1995. If the company has produced documents responsive to this request in the course of the pre-complaint investigation of this matter, FTC File No. 011-0234, those documents need not be produced again.

II. This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this request produced or obtained by the company up to thirty calendar days prior to the date of the company's full compliance with this request.

III. The response to this request shall be submitted in the following manner:

- (1) Documents provided shall be complete and, unless privileged, unredacted, submitted as found in the company's files (e.g., documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in such form). The company may submit photocopies (with color photocopies where necessary to interpret the document), in lieu of original documents, provided that such copies are accompanied by an affidavit of an officer of the company (such as that included in the certification form attached to this request) stating that the copies are true, correct, and complete copies of the original documents.

- (2) Mark each page with corporate identification and consecutive document control numbers. Number each box and mark each box with the name(s) of the person(s) whose files are contained in that box. Documents shall be submitted in sturdy cartons not larger than 1.5 cubic feet, and packed in a manner that reasonably minimizes the cubic footage of the total submission (for example, if a person's files fill only half of a box, please fill the other half with another person's files if possible, rather than leaving the space empty).
- (3) Responsive documents from each person's files shall be produced together, in file folders or with other enclosures that segregate the person's files by specification number. If a document is responsive to more than one specification, produce the document in response to the specification to which it is primarily responsive.
- (4) Provide a master list showing: (a) the name of each person from whom responsive documents are submitted; and (b) the corresponding consecutive document control number(s) used to identify that person's documents. If the master list exists as a computer file(s), provide both the computer file(s) and a printed hard copy of the master list. The Commission staff representatives will provide a sample master list upon request.

IV Data shall be provided both in electronic form on magnetic media, and on paper, unless otherwise agreed to by Commission staff

V Magnetic media shall be submitted in the following forms and formats:

(1) Magnetic storage media. The FTC will accept: (1) 9-track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI; (2) 3.5-inch microcomputer floppy diskettes, high-density, double-sided, formatted for IBM compatible computers (1.44 MB capacity); (3) Iomega ZIP disks formatted for IBM compatible PCs (100 or 250 MB capacity); (4) CD-R74 CD-ROM readable disks formatted to ISO 9660 specifications (650 MB capacity); (5) Iomega DITTO mini data cartridges (2000 MB capacity). The FTC will accept 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes by pre-authorization only. In all events, files provided on 4mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs. Where data is to be transferred from a UNIX system the FTC will accept data provided on 8mm DAT created using TAR or DD.

(2) File and record structures.

(a) Magnetically-recorded information from centralized non-microcomputer-based systems:

- (i) File structures. The FTC will accept sequential files only. All other file structures must be converted into sequential format.
- (ii) Record structures. The FTC will accept fixed length records only. All data in the record is to be provided as it would appear in printed format: *i.e.*, numbers unpacked, decimal points and signs printed.

(b) Magnetically-recorded information from microcomputers:  
Microcomputer-based data: word-processing documents should be in DOS-text (ASCII), WordPerfect 8 or earlier version, or Microsoft Word 2000 or earlier version format. Spreadsheets should be in Microsoft Excel 2000 (.xls) or earlier version, or Lotus-compatible (.wk1) format. Database files should be in Microsoft Access 2000 (.mdb) or earlier version, or dBase-compatible (.dbf), version 4 or earlier, format. Database or spreadsheet files also may be submitted after conversion to ASCII delimited, comma separated format, with field names as the first record, or to or fixed length fields accompanied by a record layout.. Graphic images must be in TIFF 4 format, compressed and unencrypted. Other proprietary software formats for word processing documents, spreadsheets, databases, graphics and other data files will be accepted by pre-authorization only. For microcomputer files that are too large for one disk, files may be provided in a compressed ZIP format.

(3) Documentation

(i) Data must be accompanied by the following information: (a) full path name of the file and (b) the identity of the media on which on which it resides, e.g. the identity of the cd, zip disk or floppy that holds the file. In the case of complex files or directories of files, all component files that are part of a given directory must be specified with their full path names. Where necessary, the subdirectories that must be created in order to successfully read these submitted files must be provided.

(ii) Files must be accompanied by the following information: (a) filename; (b) the identity of the particular storage media on which the file resides; (c) the position of the file on the media. For all sequential files, the documentation also must include (a) the number of records contained in the file; (b) the record length and block size; and (c) the record layout, including (i) the name of each element, (ii) the element's size in bytes, and (iii) the element's data type. The documentation should be included in the same package as the storage media, along with a printout of the first 100 records in report format.

(4) **Shipping:** Magnetic media should be carefully packed to avoid damage, and must be shipped clearly marked: **MAGNETIC MEDIA DO NOT X-RAY.**

(5) **Virus Checks:** Media will be scanned for viruses. Infected media will be returned for replacement.

VI If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log that includes each document's authors, addressees, date, a description of each document, all recipients of the original and any copies, and the specification(s) of this request to which the document is responsive. If the log exists as a computer file(s), provide both the computer file(s) and a printed hard copy of the log. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall include the number of pages of each document and shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable the Commission to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the company that were not directly or indirectly furnished to the company or any third-party, such as internal law firm memoranda, may be omitted from the log.

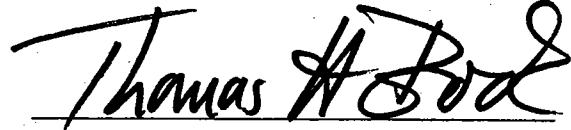
VII If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the company's document retention policy as disclosed or described in response to Specification 1 of this request or the company's response to the Subpoena Duces Tecum issued in FTC File No. 011-0234, dated June 25, 2002, but the company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.

VIII If the company believes the scope of this request for production of documents can be narrowed consistent with the Commission's need for information, you are encouraged to discuss such possible modifications with Paul Nolan at (202) 326-2770, or Philip Eisenstat at (202) 326-2769.

IX. In complying with the specifications, the Company may send the responsive materials to the attention of Paul Nolan, Federal Trade Commission, 601 New Jersey Ave., N.W., Washington, DC 20001.

Dated: \_\_\_\_\_

2/24/04



Thomas H. Brock  
Complaint Counsel  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Washington, D.C. 20580  
(202) 326-2813

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PRODUCTION OF DOCUMENTS ISSUED TO  
ENH MEDICAL GROUP, INC.**

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.37, Complaint Counsel hereby request that Respondent ENH Medical Group, Inc. produce all documents and other things responsive to the following requests, within its possession, custody, or control within twenty days of service of this request, in accordance with the Definitions and Instructions set forth below.

**SPECIFICATIONS**

In accordance with the definitions and instructions below, please submit:

1. The ENH Medical Group's: (a) articles of incorporation, constitution, by-laws, code of conduct or ethics, rules and regulations, Physician Participation Agreements, organizational charts, (b) personnel directories, and (c) for each calendar year, the names, business addresses, hospital affiliation or privileges, the medical specialties of all current and past ENH Medical Group IPA officers, committee members, members or participating physicians.

2. The ENH Medical Group's annual budget or report and annual financial statements, including, but not limited to, all documents estimating revenue received through the ENH Medical Group IPA or the extent to which Evanston Northwestern Healthcare Corp., or any of its hospitals receives or shares in the revenues or profits of the ENH Medical Group.

