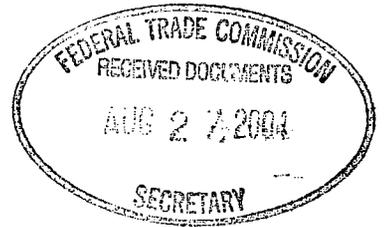


UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



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

Docket No. 9315

**MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION TO COMPEL  
ADVOCATE HEALTH CARE TO PRODUCE DOCUMENTS REQUESTED BY  
SUBPOENA DUCES TECUM**

Respondents Evanston Northwestern Healthcare and ENH Medical Group (collectively "Respondents") respectfully submit this Motion to Compel Advocate Health Care ("Advocate") to Produce Documents Requested by Subpoenas Duces Tecum in accordance with Commission Rule § 3.38(a)(2).

**BACKGROUND**

On or about April 19, 2004, Respondents served four subpoenas duces tecum (the "Subpoenas") on four Advocate owned and operated Chicago area hospitals including Advocate Good Shepard Hospital, Advocate Lutheran General Hospital, Advocate North Side Health Network (a/k/a Advocate Illinois Masonic Medical Center), and Advocate Ravenswood Hospital Medical Center. (See Exhibits 1-4). Counsel for Advocate agreed to accept service of Respondents' Subpoenas on behalf of Advocate.

Counsel for Respondents and counsel for Advocate have been in communication since soon after service of the Subpoenas. Advocate did not file any motions or objections with

this Court in response to the Subpoenas. Over the past four months, counsel for Respondents has attempted to negotiate in good faith with counsel for Advocate in order to narrow the scope of its Subpoenas. Counsel for Respondents and counsel for Advocate have had numerous telephone conferences and exchanged letters in an attempt to move towards the production of relevant documents.

As of the date of filing of this motion, Advocate has yet to produce any documents responsive to Respondents' subpoenas. Advocate's only efforts to respond has been to grant Respondents access to documents that Advocate previously produced to the Federal Trade Commission ("Commission") in 2002 pursuant to the Commission's Civil Investigative Demand and subpoena issued during the investigative phase of this matter. Respondents obtained those documents months ago as part of Complaint Counsel's initial disclosures. Further, Advocate is well aware that the Subpoenas issued to Advocate specifically excludes reproduction of such documents. (*See* Exhibits 2-4, Instruction B). Despite Respondents' efforts, Advocate has continued to delay and stall its production efforts, leaving Respondents no option but to file this motion.

### **DISCUSSION**

Respondents' document requests are highly relevant to the Complaint's allegations that respondent Evanston Northwestern Healthcare ("ENH") has violated and is violating Section 7 of the Clayton Act and that respondent ENH Medical Group ("ENH Medical Group") has violated and is violating Section 5 of the Federal Trade Commission Act. Under Commission Rule § 3.31(c)(1), Respondents have a right to "obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." 16 C.F.R. § 3.31(c)(1). "The practice of

the Commission has been to uphold subpoenas duces tecum upon a showing...that the requested information is generally relevant to the issues raised by the pleadings." Kaiser Aluminum & Chem. Corp., No. 9080, 1976 FTC LEXIS 68, at \*4 (Nov. 12, 1976). Relevancy of the information sought is determined by "laying the subpoena along side the pleadings." Rambus Inc., No. 9302, 2002 WL 31868184 (Nov. 18, 2002). The documents sought by Respondents are far more than "generally relevant" to the issues raised in the Complaint; they relate directly to issues that are explicitly raised in the pleadings, the proposed relief, and are integral to Respondents' defenses.

Respondents' seek the immediate production of documents and electronic data responsive to its Subpoenas including, but not limited to, all of Advocate's contracts with any third party payor (as defined by Definition L in the Subpoenas) (Request 2), all strategic plans or market studies developed or commissioned by Advocate during the relevant time period (Requests 3 and 4), all documents detailing Advocate's revenue from third party payors (Request 6 and 16), all documents detailing the admitting privileges and other information related to physicians (Requests 8 and 9), documents and data relating to Advocate's patient origin information (Request 14), all documents created during the process of negotiating contracts with third party payors including but not limited to internal and external correspondence, emails, and proposals (Requests 18 and 26), and Advocate's chargemaster on an annual basis (Request 31).

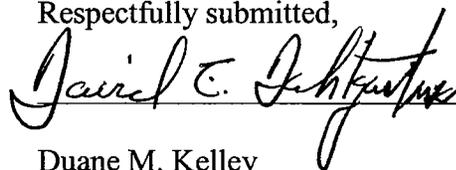
Commission Rule § 3.38(a)(1) squarely places the burden of justifying an objection to a subpoena on the opposing party. 16 C.F.R. § 3.38(a)(1); see F.T.C. v. Texaco, 555 F.2d 862, 882 (D.C. Cir. 1977) (stating that "[t]he burden of showing that the request is unreasonable is on the subpoenaed party"). To date, Advocate has not objected to the production of documents, rather merely attempted to avoid production through constant delay. Respondents

file this motion in an attempt to ask the Court to end Advocate's efforts to delay discovery in this matter.

**WHEREFORE**, for the foregoing reasons, Respondents request that the requested documents should be produced.

DATED: August 27, 2004

Respectfully submitted,



Duane M. Kelley  
David E. Dahlquist  
WINSTON & STRAWN LLP  
35 W. Wacker Drive  
Chicago, IL 60601-9703  
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ddahlquist@winston.com  
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Phone: (202) 371-5700  
Fax: (202) 371-5950  
msibarium@winston.com  
cklein@winston.com

*Attorneys for Respondents*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 27, 2004, a copy of the foregoing Memorandum in Support of Respondents' Motion to Compel Advocate Health Care to Produce Documents Requested By Subpoena Duces Tecum was served by email and first class mail, postage prepaid, on:

The Honorable Stephen J. McGuire  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave. NW (H-106)  
Washington, DC 20580  
(two courtesy copies delivered by messenger only)

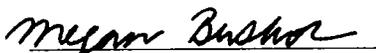
Michael E. Kerns, Esq.  
Advocate Health Care  
2025 Windsor Drive  
Oak Brook, IL 60523

Laura Liu  
Hogan & Marren Ltd.  
205 N. Michigan Avenue, Suite 4314  
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Assistant Director Mergers IV  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, DC 20580  
cpak@ftc.gov (service by email only)

  
Megan Bushor



# SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

<b>1. TO</b> ADVOCATE HEALTH AND HOSPITALS CORP: LUTHERAN GENERAL HOSPITAL c/o Gail D. Hasbrouck 2025 Windsor Drive Oak Brook, IL 60521-0222	<b>2. FROM</b>  <div style="text-align: center;"> <b>UNITED STATES OF AMERICA</b>  <b>FEDERAL TRADE COMMISSION</b> </div>
-------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<b>3. PLACE OF PRODUCTION OR INSPECTION</b>  Winston & Strawn LLP 1400 L Street, N.W. Washington, D.C. 20005	<b>4. MATERIAL WILL BE PRODUCED TO</b> David Dahlquist, Esq.
<b>5. DATE AND TIME OF PRODUCTION OR INSPECTION</b> May 6, 2004	

**6. SUBJECT OF PROCEEDING**

In the Matter of Evanston Northwestern Healthcare Corporation, et al., Docket No. 9315

**7. MATERIAL TO BE PRODUCED**

See Attached Schedule A

<b>8. ADMINISTRATIVE LAW JUDGE</b>  The Honorable Stephen J. McGuire  Federal Trade Commission Washington, D.C. 20580	<b>9. COUNSEL REQUESTING SUBPOENA</b> Michael L. Sibarium Charles B. Klein Winston & Strawn LLP 1400 L Street, N.W. Washington, D.C. 20005
--------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------

<b>DATE ISSUED</b>  APR 8 2004	<b>SECRETARY'S SIGNATURE</b> 
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### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

## SCHEDULE A

### INSTRUCTIONS

- A. Unless otherwise specified, the time period addressed by this Schedule is January 1, 1997 through the present day. All references to year refer to a calendar year.
- B. If you have produced documents responsive to this Schedule in the course of the pre-complaint investigation of this matter, FTC File No. 0110234, those documents need not be produced again so long as such documents are identified by Bates range or comparable means in your response to this subpoena.
- C. If any document requested is withheld pursuant to a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this Subpoena. In addition, you must submit, together with the claim of privilege, a log stating the following information for each data item withheld: (a) the specifications and sub-specifications for which the data is responsive; (b) the type or specific subject matter, and date of the data; (c) the names, addresses, positions, and organizations of all authors and recipients of the data; and (d) the specific grounds for claiming that the data is privileged with sufficient particularity and detail to permit the Administrative Law Judge to adjudicate the validity of such claim. If only some portion of any responsive information or data is privileged, all non-privileged portions of the information or data must be submitted.
- D. With respect to specific documents produced in response to this Schedule, each document provided shall be complete and, unless privileged, unredacted and submitted as found in your files (e.g. documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in such form.) Your Hospital 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 Your Hospital stating that the copies are true, correct and complete copies of the original documents.

E. Each document produced by you in response to this Schedule should be marked with corporate identification and consecutive document control numbers. In addition, all documents produced in response to the Schedule shall be organized and labeled to correspond with each request or any part thereof. To the extent you have produced documents on the pre-complaint investigation of this matter, FTC File No. 0110234, please use a different pre-fix for documents produced in response to this Schedule.

F. In the event that any document referred to or identified has been destroyed or otherwise disposed of, that document is to be identified by (i) the author; (ii) the addressee, including persons to whom blind copies were addressed; (iii) the date; (iv) the subject matter; (v) the number of pages, attachments or appendices; (vi) all persons to whom the document was distributed, showed or explained; (vii) a description of the circumstances under which the document was destroyed or disposed of; (viii) the date of destruction or other disposition; (ix) the person who destroyed or disposed of the document; and (x) the person who directed or authorized such destruction or disposition.

G. This Schedule is continuing and any document obtained subsequent to production that would have been produced had it been available or its existence been known at the time of production, shall be produced forthwith.

H. This Schedule is intended to include all requested documents in the possession, custody or control of Your Hospital or any other person acting or purporting to act on its behalf, wherever such documents are located and by whomever prepared.

I. Reference to an individual shall also refer to that individual's predecessors and successors in interest, direct or indirect, and his or her heirs, employees, assigns, trusts, estates, attorneys, and agents.

J. Reference to an entity shall also refer to that entity's companies, corporations, divisions, departments, associations, partnerships, joint ventures, trusts, subsidiaries, affiliates, and any other forms of business or commercial organization or arrangement, predecessors and successors in interest, direct or indirect, and its past, present and future partners, associates, officers, directors, shareholders, principals, employees, representatives, assigns, advisors, attorneys and agents.

K. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The terms "each" and "all" are to be constructed as a request that every document or piece of information be identified separately.

L. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive

M. The singular includes the plural, and vice versa.

N. The production of documents pursuant to this subpoena is subject to the terms and conditions of the attached Protective Order.

O. Any questions you have relating to the scope or meaning of anything in this Schedule or any suggestions for possible modifications thereto should be directed to David E. Dahlquist at (312) 558-5660 or ddahlquist@winston.com. A response to this Subpoena shall be addressed to the attention of David E. Dahlquist, Winston & Strawn LLP, 35 West Wacker Drive, Chicago, IL 60601-9703.

## DEFINITIONS

A. The terms “constitute,” “contain,” “discuss,” “analyze,” or “relate to” mean constituting, reflecting, respecting, regarding, concerning, pertaining to, referring to, relating to, stating, describing, recording, noting, embodying, memorializing, containing, mentioning, studying, assessing, analyzing or discussing.

B. The term “document” is used herein in the broadest sense permissible under Federal Trade Commission Rule of Practice 3.34(b) and includes, without limitation, writings, drawings, graphs, charts, handwritten notes, films, photographs, audio and video recordings and any such representations stored on a computer, a computer disk, CD-ROM, magnetic or electronic tape, or any other means of electronic storage, and other compilations from which information can be obtained in machine-readable form (translated, if necessary, into reasonably usable form by the person subject to the subpoena). 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 your possession, custody or control.

C. The term “ENH” means Evanston Northwestern Healthcare Corporation (including Evanston Hospital, Glenbrook Hospital, and Highland Park Hospital), its 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.

D. The term “ENH/Highland Park transaction” means merger between Evanston Northwest Healthcare Corporation and Highland Park Hospital in or about January 2000.

E. The term "ENH Medical Group" means ENH Medical Group, Inc., its predecessors and affiliates.

F. The term "Geographic Area" means Lake, Cook, Kane, Kendall, and McHenry counties in Illinois.

G. The term "health care facility" means a hospital, health maintenance organization facility, ambulatory care center, first aid or other clinic, urgent care center, free-standing emergency care center, imaging center, ambulatory surgery center and all other entities that provide health care services.

H. The term "health care service" means a medical or surgical service or procedure performed at a health care facility.

I. The term "hospital" is a type of health care facility that provides, among other services, inpatient health care services.

J. The term "Highland Park" means Highland Park Hospital, its parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

K. The term "licensed beds" means beds recognized, authorized, or approved by the State of Illinois.

L. The term "third party payor" means a person other than a natural person that pays any health care expenses of any other person, and all of its directors, officers, employees, agents and representatives. Third party payor includes, but is not limited to: Blue Cross and Blue Shield plans, commercial insurance companies, health maintenance organizations, preferred provider organizations, competitive medical plans, union trust funds, multiple employer trusts, corporate or governmental self-insured health benefit plans, Medicare, Medicaid, or CHAMPUS.

M. The terms "you" and "Your Hospital" mean Lutheran General Hospital.

**DOCUMENTS TO BE PRODUCED**

1. All documents referring or relating in any manner to any plan or proposal between Your Hospital and any other health care facility relating to any affiliation, any multi-institutional arrangement, or any sharing or allocation of services, equipment or facilities.

2. All contracts between Your Hospital and any third party payor, including all amendments, appendices or related documents reflecting any contract terms.

3. All documents referring or relating in any manner to any plan, proposal or strategy for maintaining or increasing the number of patients treated at facilities of Your Hospital, including but not limited to any plan, proposal or strategy for expanding or constructing any structures, or for increasing quality of care at your hospital.

4. All documents relating to competition in the provision of any health care service, including, but not limited to, market studies, forecasts, and surveys, and all other documents relating to:

(a) the market share or competitive position of Your Hospital, ENH or the competitors of either hospital;

(b) the quality of care provided by Your Hospital, ENH or the competitors of either hospital;

(c) the relative strength or weakness of hospitals providing any health care service;

(d) supply and demand conditions;

(e) hospital preferences or perceptions of consumers, patients, or physicians (including, but not limited to, patient satisfaction surveys);

- (f) the preferences of third party payors for hospitals;
- (g) Your Hospital's marketing plans, brochures and strategic plans;
- (h) any comparisons of Your Hospital's contracted hospital rates with other hospital's rates; or
- (i) any comparisons of Your Hospital's costs per patient discharge with those of any competing hospital.

5. All documents referring or relating in any manner to any proposed, planned or actual shift or diversion of patients by any third party payor to or from any hospital.

6. Documents pertaining to Your Hospital that are sufficient to determine for the years 1995 to the present and sufficient to project through 2006:

- (a) the number of licensed beds;
- (b) the number of staffed beds;
- (c) the level of occupancy or utilization;
- (d) the amount of long-term debt incurred;
- (e) the percentage of revenue from commercially insured patients;
- (f) the annual operating surplus (or deficit);
- (g) new services; and
- (h) investment in infrastructure.

7. All documents analyzing the efficiencies that would or could be achieved through any merger, acquisition or affiliation involving Your Hospital and any other hospital, hospital system or health care facility.

8. All documents (including annual physician rosters) describing which physicians have admitting privileges at Your Hospital and for each of these physicians any other hospital in which the physician has admitting privileges.

9. Documents (in machine readable form if available) sufficient to determine which physicians with admitting privileges at Your Hospital maintain an office in the Geographic Area or have admitting privileges at any hospital in the Geographic Area and, as to each such physician, documents sufficient to establish:

- (a) the location of the physician's office or offices;
- (b) the physician's medical specialty;
- (c) the physician's Universal Provider Identification Number;
- (d) the physician's Illinois license number;
- (e) any other identification number your plan assigns to the physician;
- (f) the number of admissions that the physician made each year; and
- (g) the total amount billed or paid each year as a result of that physician's

admissions, including but not limited to amount per payor per managed health care plan.

10. A representative sample of all advertising and promotional literature used by Your Hospital.

11. All documents referring or relating in any manner to the ENH/Highland Park Transaction.

12. Documents sufficient to determine for patients of Your Hospital for each year: (a) the total number of discharges, (b) the total number of discharges of managed care patients, and (c) the total number of inpatient days, (d) the total number of inpatient days of managed care patients, and (e) the total number of discharges of patients whose hospital charges were paid by

commercial third party payors. In addition, documents sufficient to determine the total billed charges for each of those categories of patients, including, but not limited to, total billed charges by payor by managed health care plan.

13. All documents referring or relating in any manner to the distinction between primary, secondary or tertiary services offered at hospitals or other health care facilities in a managed health care network.

14. All documents relating to any study, analysis, report, summary or tabulation regarding any characteristic of any patients admitted or discharged from any hospital in the Geographic Area, including such characteristics as: age; place of residence; type of admission; principal diagnosis; procedures performed; charges; admitting physician, physician group or physician organization; category of payor or third party payor affiliation.

15. All documents relating to any communication between Your Hospital and any person owning, operating or representing any other hospital in the Geographic Area regarding any potential relationship or affiliation between the hospitals or regarding any health care service, including all documents reflecting any negotiations with Third Party Payer undertaken by any such affiliated entity, if any.

16. Documents sufficient to determine the total number of admissions made, the aggregate total billed charges, and the revenue collected each year for any third party payor or employer.

17. All documents referring or relating in any manner to any offer to or by any managed care company or third party payor to designate Your Hospital as its sole or exclusive provider for any category or service or for any geographic area.

18. All documents referring or relating to any refusal by ENH or Your Hospital to negotiate or agree upon terms with any managed care company or third party payor or to terminate its relationship with any third party payor.

19. All documents relating to the Northwestern Healthcare Network since its inception.

20. All documents relating to the marketability of Your Hospital to any third party payor, including all documents relating to the marketability of Your Hospital in affiliation with any other hospital or medical group, and the ability of such an affiliated entity to negotiate managed care contracts.

21. All documents relating to the marketability of any third party payor plans depending on the inclusion or exclusion of any hospital in the Geographic Area.

22. All documents (including models) that refer or relate to the relationship, if any, between (a) operating costs at Your Hospital and/or rates charged by Your Hospital, and (b) quality of care provided at Your Hospital.

23. All documents referring or relating to different billing methodologies used or considered by Your Hospital (including, but not limited to, discount list pricing and per diem pricing) and the reasons for using or rejecting such billing methodologies.

24. All documents sufficient to show any increase in Your Hospital's operating costs and salary expenses from January 2000 to the present, and any corresponding increase in Your Hospital's rates.

25. All documents reflecting any increase in Your Hospital's billing rates (charges, contractual rate increases, increases in adjusted patient revenue per admission) of more than 20% at one time or in the aggregate over the course of a year.

26. To the extent not covered by one of the requests above, all documents reflecting any negotiations between your hospital and any managed care company, including all documents relating to any managed care company's decision to terminate or otherwise discontinue any contract with Your Hospital.

27. All documents relating to the source of critical paths for services or best practices that Your Hospital has adopted or considered.

28. All documents relating to traffic patterns or driving time which may affect Your Hospital's ability to seek patients.

29. All documents referring or relating to any changes in your strategic pricing.

30. All documents referring or relating to any changes made by Your Hospital in response to cuts in Medicare reimbursement rates, including but limited to all documents relating to changes in discounting.

31. Documents sufficient to show changes in your charge master.

DC:348939.18



# SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

<b>1. TO</b> ADVOCATE HEALTH AND HOSPITALS CORP: GOOD SHEPARD HOSPITAL c/o Gail D. Hasbrouck 2025 Windsor Drive Oak Brook, IL 60521-1586	<b>2. FROM</b>  UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
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This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<b>3. PLACE OF PRODUCTION OR INSPECTION</b>  Winston & Strawn LLP 1400 L Street, N.W. Washington, D.C. 20005	<b>4. MATERIAL WILL BE PRODUCED TO</b> David Dahlquist, Esq. <hr/> <b>5. DATE AND TIME OF PRODUCTION OR INSPECTION</b> May 6, 2004
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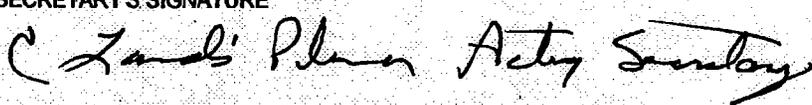
**6. SUBJECT OF PROCEEDING**

In the Matter of Evanston Northwestern Healthcare Corporation, et al., Docket No. 9315

**7. MATERIAL TO BE PRODUCED**

See Schedule Attached

<b>8. ADMINISTRATIVE LAW JUDGE</b>  The Honorable Stephen J. McGuire  Federal Trade Commission Washington, D.C. 20580	<b>9. COUNSEL REQUESTING SUBPOENA</b> Michael L. Sibarium Charles B. Klein Winston & Strawn LLP 1400 L Street, N.W. Washington, D.C. 20005
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<b>DATE ISSUED</b>  APR 8 2004	<b>SECRETARY'S SIGNATURE</b> 
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### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

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#### TRAVEL EXPENSES

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This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

STATE LEGAL<sup>®</sup> EXHIBIT

2

**SCHEDULE A**  
**INSTRUCTIONS**

- A. Unless otherwise specified, the time period addressed by this Schedule is January 1, 1997 through the present day. All references to year refer to a calendar year.
- B. If you have produced documents responsive to this Schedule in the course of the pre-complaint investigation of this matter, FTC File No. 0110234, those documents need not be produced again so long as such documents are identified by Bates range or comparable means in your response to this subpoena.
- C. If any document requested is withheld pursuant to a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this Subpoena. In addition, you must submit, together with the claim of privilege, a log stating the following information for each data item withheld: (a) the specifications and sub-specifications for which the data is responsive; (b) the type or specific subject matter, and date of the data; (c) the names, addresses, positions, and organizations of all authors and recipients of the data; and (d) the specific grounds for claiming that the data is privileged with sufficient particularity and detail to permit the Administrative Law Judge to adjudicate the validity of such claim. If only some portion of any responsive information or data is privileged, all non-privileged portions of the information or data must be submitted.
- D. With respect to specific documents produced in response to this Schedule, each document provided shall be complete and, unless privileged, unredacted and submitted as found in your files (e.g. documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in such form.) Your Hospital 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 Your Hospital stating that the copies are true, correct and complete copies of the original documents.

E. Each document produced by you in response to this Schedule should be marked with corporate identification and consecutive document control numbers. In addition, all documents produced in response to the Schedule shall be organized and labeled to correspond with each request or any part thereof. To the extent you have produced documents on the pre-complaint investigation of this matter, FTC File No. 0110234, please use a different pre-fix for documents produced in response to this Schedule.

F. In the event that any document referred to or identified has been destroyed or otherwise disposed of, that document is to be identified by (i) the author; (ii) the addressee, including persons to whom blind copies were addressed; (iii) the date; (iv) the subject matter; (v) the number of pages, attachments or appendices; (vi) all persons to whom the document was distributed, showed or explained; (vii) a description of the circumstances under which the document was destroyed or disposed of; (viii) the date of destruction or other disposition; (ix) the person who destroyed or disposed of the document; and (x) the person who directed or authorized such destruction or disposition.

G. This Schedule is continuing and any document obtained subsequent to production that would have been produced had it been available or its existence been known at the time of production, shall be produced forthwith.

H. This Schedule is intended to include all requested documents in the possession, custody or control of Your Hospital or any other person acting or purporting to act on its behalf, wherever such documents are located and by whomever prepared.

I. Reference to an individual shall also refer to that individual's predecessors and successors in interest, direct or indirect, and his or her heirs, employees, assigns, trusts, estates, attorneys, and agents.

J. Reference to an entity shall also refer to that entity's companies, corporations, divisions, departments, associations, partnerships, joint ventures, trusts, subsidiaries, affiliates, and any other forms of business or commercial organization or arrangement, predecessors and successors in interest, direct or indirect, and its past, present and future partners, associates, officers, directors, shareholders, principals, employees, representatives, assigns, advisors, attorneys and agents.

K. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The terms "each" and "all" are to be constructed as a request that every document or piece of information be identified separately.

L. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive.

M. The singular includes the plural, and vice versa.

N. The production of documents pursuant to this subpoena is subject to the terms and conditions of the attached Protective Order.

O. Any questions you have relating to the scope or meaning of anything in this Schedule or any suggestions for possible modifications thereto should be directed to David E. Dahlquist at (312) 558-5660 or ddahlquist@winston.com. A response to this Subpoena shall be addressed to the attention of David E. Dahlquist, Winston & Strawn LLP, 35 West Wacker Drive, Chicago, IL 60601-9703.

## DEFINITIONS

A. The terms “constitute,” “contain,” “discuss,” “analyze,” or “relate to” mean constituting, reflecting, respecting, regarding, concerning, pertaining to, referring to, relating to, stating, describing, recording, noting, embodying, memorializing, containing, mentioning, studying, assessing, analyzing or discussing.

B. The term “document” is used herein in the broadest sense permissible under Federal Trade Commission Rule of Practice 3.34(b) and includes, without limitation, writings, drawings, graphs, charts, handwritten notes, films, photographs, audio and video recordings and any such representations stored on a computer, a computer disk, CD-ROM, magnetic or electronic tape, or any other means of electronic storage, and other compilations from which information can be obtained in machine-readable form (translated, if necessary, into reasonably usable form by the person subject to the subpoena). 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 your possession, custody or control.

C. The term “ENH” means Evanston Northwestern Healthcare Corporation (including Evanston Hospital, Glenbrook Hospital, and Highland Park Hospital), its 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.

D. The term “ENH/Highland Park transaction” means merger between Evanston Northwest Healthcare Corporation and Highland Park Hospital in or about January 2000.

E. The term "ENH Medical Group" means ENH Medical Group, Inc., its predecessors and affiliates.

F. The term "Geographic Area" means Lake, Cook, Kane, Kendall, and McHenry counties in Illinois.

G. The term "health care facility" means a hospital, health maintenance organization facility, ambulatory care center, first aid or other clinic, urgent care center, free-standing emergency care center, imaging center, ambulatory surgery center and all other entities that provide health care services.

H. The term "health care service" means a medical or surgical service or procedure performed at a health care facility.

I. The term "hospital" is a type of health care facility that provides, among other services, inpatient health care services.

J. The term "Highland Park" means Highland Park Hospital, its parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

K. The term "licensed beds" means beds recognized, authorized, or approved by the State of Illinois.

L. The term "third party payor" means a person other than a natural person that pays any health care expenses of any other person, and all of its directors, officers, employees, agents and representatives. Third party payor includes, but is not limited to: Blue Cross and Blue Shield plans, commercial insurance companies, health maintenance organizations, preferred provider organizations, competitive medical plans, union trust funds, multiple employer trusts, corporate or governmental self-insured health benefit plans, Medicare, Medicaid, or CHAMPUS.

M. The terms "you" and "Your Hospital" mean Good Shepard Hospital.

**DOCUMENTS TO BE PRODUCED**

1. All documents referring or relating in any manner to any plan or proposal between Your Hospital and any other health care facility relating to any affiliation, any multi-institutional arrangement, or any sharing or allocation of services, equipment or facilities.
2. All contracts between Your Hospital and any third party payor, including all amendments, appendices or related documents reflecting any contract terms.
3. All documents referring or relating in any manner to any plan, proposal or strategy for maintaining or increasing the number of patients treated at facilities of Your Hospital, including but not limited to any plan, proposal or strategy for expanding or constructing any structures, or for increasing quality of care at your hospital.
4. All documents relating to competition in the provision of any health care service, including, but not limited to, market studies, forecasts, and surveys, and all other documents relating to:
  - (a) the market share or competitive position of Your Hospital, ENH or the competitors of either hospital;
  - (b) the quality of care provided by Your Hospital, ENH or the competitors of either hospital;
  - (c) the relative strength or weakness of hospitals providing any health care service;
  - (d) supply and demand conditions;
  - (e) hospital preferences or perceptions of consumers, patients, or physicians (including, but not limited to, patient satisfaction surveys);

- (f) the preferences of third party payors for hospitals;
- (g) Your Hospital's marketing plans, brochures and strategic plans;
- (h) any comparisons of Your Hospital's contracted hospital rates with other hospital's rates; or
- (i) any comparisons of Your Hospital's costs per patient discharge with those of any competing hospital.

5. All documents referring or relating in any manner to any proposed, planned or actual shift or diversion of patients by any third party payor to or from any hospital.

6. Documents pertaining to Your Hospital that are sufficient to determine for the years 1995 to the present and sufficient to project through 2006:

- (a) the number of licensed beds;
- (b) the number of staffed beds;
- (c) the level of occupancy or utilization;
- (d) the amount of long-term debt incurred;
- (e) the percentage of revenue from commercially insured patients;
- (f) the annual operating surplus (or deficit);
- (g) new services; and
- (h) investment in infrastructure.

7. All documents analyzing the efficiencies that would or could be achieved through any merger, acquisition or affiliation involving Your Hospital and any other hospital, hospital system or health care facility.

8. All documents (including annual physician rosters) describing which physicians have admitting privileges at Your Hospital and for each of these physicians any other hospital in which the physician has admitting privileges.

9. Documents (in machine readable form if available) sufficient to determine which physicians with admitting privileges at Your Hospital maintain an office in the Geographic Area or have admitting privileges at any hospital in the Geographic Area and, as to each such physician, documents sufficient to establish:

- (a) the location of the physician's office or offices;
- (b) the physician's medical specialty;
- (c) the physician's Universal Provider Identification Number;
- (d) the physician's Illinois license number;
- (e) any other identification number your plan assigns to the physician;
- (f) the number of admissions that the physician made each year; and
- (g) the total amount billed or paid each year as a result of that physician's

admissions, including but not limited to amount per payor per managed health care plan.

10. A representative sample of all advertising and promotional literature used by Your Hospital.

11. All documents referring or relating in any manner to the ENH/Highland Park Transaction.

12. Documents sufficient to determine for patients of Your Hospital for each year: (a) the total number of discharges, (b) the total number of discharges of managed care patients, and (c) the total number of inpatient days, (d) the total number of inpatient days of managed care patients, and (e) the total number of discharges of patients whose hospital charges were paid by

commercial third party payors. In addition, documents sufficient to determine the total billed charges for each of those categories of patients, including, but not limited to, total billed charges by payor by managed health care plan.

13. All documents referring or relating in any manner to the distinction between primary, secondary or tertiary services offered at hospitals or other health care facilities in a managed health care network.

14. All documents relating to any study, analysis, report, summary or tabulation regarding any characteristic of any patients admitted or discharged from any hospital in the Geographic Area, including such characteristics as: age; place of residence; type of admission; principal diagnosis; procedures performed; charges; admitting physician, physician group or physician organization; category of payor or third party payor affiliation.

15. All documents relating to any communication between Your Hospital and any person owning, operating or representing any other hospital in the Geographic Area regarding any potential relationship or affiliation between the hospitals or regarding any health care service, including all documents reflecting any negotiations with Third Party Payer undertaken by any such affiliated entity, if any.

16. Documents sufficient to determine the total number of admissions made, the aggregate total billed charges, and the revenue collected each year for any third party payor or employer.

17. All documents referring or relating in any manner to any offer to or by any managed care company or third party payor to designate Your Hospital as its sole or exclusive provider for any category or service or for any geographic area.

18. All documents referring or relating to any refusal by ENH or Your Hospital to negotiate or agree upon terms with any managed care company or third party payor or to terminate its relationship with any third party payor.

19. All documents relating to the Northwestern Healthcare Network since its inception.

20. All documents relating to the marketability of Your Hospital to any third party payor, including all documents relating to the marketability of Your Hospital in affiliation with any other hospital or medical group, and the ability of such an affiliated entity to negotiate managed care contracts.

21. All documents relating to the marketability of any third party payor plans depending on the inclusion or exclusion of any hospital in the Geographic Area.

22. All documents (including models) that refer or relate to the relationship, if any, between (a) operating costs at Your Hospital and/or rates charged by Your Hospital, and (b) quality of care provided at Your Hospital.

23. All documents referring or relating to different billing methodologies used or considered by Your Hospital (including, but not limited to, discount list pricing and per diem pricing) and the reasons for using or rejecting such billing methodologies.

24. All documents sufficient to show any increase in Your Hospital's operating costs and salary expenses from January 2000 to the present, and any corresponding increase in Your Hospital's rates.

25. All documents reflecting any increase in Your Hospital's billing rates (charges, contractual rate increases, increases in adjusted patient revenue per admission) of more than 20% at one time or in the aggregate over the course of a year.

26. To the extent not covered by one of the requests above, all documents reflecting any negotiations between your hospital and any managed care company, including all documents relating to any managed care company's decision to terminate or otherwise discontinue any contract with Your Hospital.

27. All documents relating to the source of critical paths for services or best practices that Your Hospital has adopted or considered.

28. All documents relating to traffic patterns or driving time which may affect Your Hospital's ability to seek patients.

29. All documents referring or relating to any changes in your strategic pricing,

30. All documents referring or relating to any changes made by Your Hospital in response to cuts in Medicare reimbursement rates, including but limited to all documents relating to changes in discounting.

31. Documents sufficient to show changes in your charge master.

DC:348939.19



# SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

<b>1. TO</b> ADVOCATE NORTH SIDE HEALTH NETWORK c/o Gail D. Hasbrouck 2025 Windsor Drive Oak Brook, IL 60520	<b>2. FROM</b>  UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
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This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<b>3. PLACE OF PRODUCTION OR INSPECTION</b>  Winston & Strawn LLP 1400 L Street, N.W. Washington, D.C. 20005	<b>4. MATERIAL WILL BE PRODUCED TO</b> David Dahlquist, Esq.  <b>5. DATE AND TIME OF PRODUCTION OR INSPECTION</b> May 6, 2004
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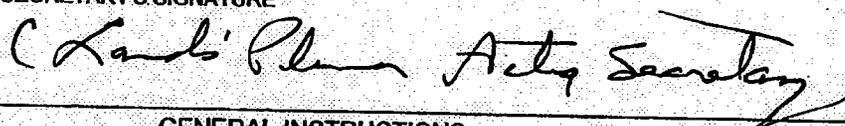
**6. SUBJECT OF PROCEEDING**

In the Matter of Evanston Northwestern Healthcare Corporation, et al., Docket No. 9315

**7. MATERIAL TO BE PRODUCED**

See Attached Schedule A

<b>8. ADMINISTRATIVE LAW JUDGE</b>  The Honorable Stephen J. McGuire  Federal Trade Commission Washington, D.C. 20580	<b>9. COUNSEL REQUESTING SUBPOENA</b> Michael L. Sibarium Charles B. Klein Winston & Strawn LLP 1400 L Street, N.W. Washington, D.C. 20005
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<b>DATE ISSUED</b>  APR 8 2004	<b>SECRETARY'S SIGNATURE</b> 
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### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.  
DC:353403.21

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

L-STATE LEGAL®

**EXHIBIT**

3

**SCHEDULE A**  
**INSTRUCTIONS**

- A. Unless otherwise specified, the time period addressed by this Schedule is January 1, 1997 through the present day. All references to year refer to a calendar year.
- B. If you have produced documents responsive to this Schedule in the course of the pre-complaint investigation of this matter, FTC File No. 0110234, those documents need not be produced again so long as such documents are identified by Bates range or comparable means in your response to this subpoena.
- C. If any document requested is withheld pursuant to a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this Subpoena. In addition, you must submit, together with the claim of privilege, a log stating the following information for each data item withheld: (a) the specifications and sub-specifications for which the data is responsive; (b) the type or specific subject matter, and date of the data; (c) the names, addresses, positions, and organizations of all authors and recipients of the data; and (d) the specific grounds for claiming that the data is privileged with sufficient particularity and detail to permit the Administrative Law Judge to adjudicate the validity of such claim. If only some portion of any responsive information or data is privileged, all non-privileged portions of the information or data must be submitted.
- D. With respect to specific documents produced in response to this Schedule, each document provided shall be complete and, unless privileged, unredacted and submitted as found in your files (e.g. documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in such form.) Your Hospital 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 Your Hospital stating that the copies are true, correct and complete copies of the original documents.

E. Each document produced by you in response to this Schedule should be marked with corporate identification and consecutive document control numbers. In addition, all documents produced in response to the Schedule shall be organized and labeled to correspond with each request or any part thereof. To the extent you have produced documents on the pre-complaint investigation of this matter, FTC File No. 0110234, please use a different pre-fix for documents produced in response to this Schedule.

F. In the event that any document referred to or identified has been destroyed or otherwise disposed of, that document is to be identified by (i) the author; (ii) the addressee, including persons to whom blind copies were addressed; (iii) the date; (iv) the subject matter; (v) the number of pages, attachments or appendices; (vi) all persons to whom the document was distributed, showed or explained; (vii) a description of the circumstances under which the document was destroyed or disposed of; (viii) the date of destruction or other disposition; (ix) the person who destroyed or disposed of the document; and (x) the person who directed or authorized such destruction or disposition.

G. This Schedule is continuing and any document obtained subsequent to production that would have been produced had it been available or its existence been known at the time of production, shall be produced forthwith.

H. This Schedule is intended to include all requested documents in the possession, custody or control of Your Hospital or any other person acting or purporting to act on its behalf, wherever such documents are located and by whomever prepared.

I. Reference to an individual shall also refer to that individual's predecessors and successors in interest, direct or indirect, and his or her heirs, employees, assigns, trusts, estates, attorneys, and agents.

J. Reference to an entity shall also refer to that entity's companies, corporations, divisions, departments, associations, partnerships, joint ventures, trusts, subsidiaries, affiliates, and any other forms of business or commercial organization or arrangement, predecessors and successors in interest, direct or indirect, and its past, present and future partners, associates, officers, directors, shareholders, principals, employees, representatives, assigns, advisors, attorneys and agents.

K. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The terms "each" and "all" are to be constructed as a request that every document or piece of information be identified separately.

L. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive.

M. The singular includes the plural, and vice versa.

N. The production of documents pursuant to this subpoena is subject to the terms and conditions of the attached Protective Order.

O. Any questions you have relating to the scope or meaning of anything in this Schedule or any suggestions for possible modifications thereto should be directed to David E. Dahlquist at (312) 558-5660 or ddahlquist@winston.com. A response to this Subpoena shall be addressed to the attention of David E. Dahlquist, Winston & Strawn LLP, 35 West Wacker Drive, Chicago, IL 60601-9703.

## DEFINITIONS

A. The terms “constitute,” “contain,” “discuss,” “analyze,” or “relate to” mean constituting, reflecting, respecting, regarding, concerning, pertaining to, referring to, relating to, stating, describing, recording, noting, embodying, memorializing, containing, mentioning, studying, assessing, analyzing or discussing.

B. The term “document” is used herein in the broadest sense permissible under Federal Trade Commission Rule of Practice 3.34(b) and includes, without limitation, writings, drawings, graphs, charts, handwritten notes, films, photographs, audio and video recordings and any such representations stored on a computer, a computer disk, CD-ROM, magnetic or electronic tape, or any other means of electronic storage, and other compilations from which information can be obtained in machine-readable form (translated, if necessary, into reasonably usable form by the person subject to the subpoena). 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 your possession, custody or control.

C. The term “ENH” means Evanston Northwestern Healthcare Corporation (including Evanston Hospital, Glenbrook Hospital, and Highland Park Hospital), its 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.

D. The term “ENH/Highland Park transaction” means merger between Evanston Northwest Healthcare Corporation and Highland Park Hospital in or about January 2000.

E. The term "ENH Medical Group" means ENH Medical Group, Inc., its predecessors and affiliates.

F. The term "Geographic Area" means Lake, Cook, Kane, Kendall, and McHenry counties in Illinois.

G. The term "health care facility" means a hospital, health maintenance organization facility, ambulatory care center, first aid or other clinic, urgent care center, free-standing emergency care center, imaging center, ambulatory surgery center and all other entities that provide health care services.

H. The term "health care service" means a medical or surgical service or procedure performed at a health care facility.

I. The term "hospital" is a type of health care facility that provides, among other services, inpatient health care services.

J. The term "Highland Park" means Highland Park Hospital, its parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

K. The term "licensed beds" means beds recognized, authorized, or approved by the State of Illinois.

L. The term "third party payor" means a person other than a natural person that pays any health care expenses of any other person, and all of its directors, officers, employees, agents and representatives. Third party payor includes, but is not limited to: Blue Cross and Blue Shield plans, commercial insurance companies, health maintenance organizations, preferred provider organizations, competitive medical plans, union trust funds, multiple employer trusts, corporate or governmental self-insured health benefit plans, Medicare, Medicaid, or CHAMPUS.

M. The terms “you” and “Your Hospital” mean Advocate North Side Health Network.

**DOCUMENTS TO BE PRODUCED**

1. All documents referring or relating in any manner to any plan or proposal between Your Hospital and any other health care facility relating to any affiliation, any multi-institutional arrangement, or any sharing or allocation of services, equipment or facilities.

2. All contracts between Your Hospital and any third party payor, including all amendments, appendices or related documents reflecting any contract terms.

3. All documents referring or relating in any manner to any plan, proposal or strategy for maintaining or increasing the number of patients treated at facilities of Your Hospital, including but not limited to any plan, proposal or strategy for expanding or constructing any structures, or for increasing quality of care at your hospital.

4. All documents relating to competition in the provision of any health care service, including, but not limited to, market studies, forecasts, and surveys, and all other documents relating to:

(a) the market share or competitive position of Your Hospital, ENH or the competitors of either hospital;

(b) the quality of care provided by Your Hospital, ENH or the competitors of either hospital;

(c) the relative strength or weakness of hospitals providing any health care service;

(d) supply and demand conditions;

- (e) hospital preferences or perceptions of consumers, patients, or physicians (including, but not limited to, patient satisfaction surveys);
- (f) the preferences of third party payors for hospitals;
- (g) Your Hospital's marketing plans, brochures and strategic plans;
- (h) any comparisons of Your Hospital's contracted hospital rates with other hospital's rates; or
- (i) any comparisons of Your Hospital's costs per patient discharge with those of any competing hospital.

5. All documents referring or relating in any manner to any proposed, planned or actual shift or diversion of patients by any third party payor to or from any hospital.

6. Documents pertaining to Your Hospital that are sufficient to determine for the years 1995 to the present and sufficient to project through 2006:

- (a) the number of licensed beds;
- (b) the number of staffed beds;
- (c) the level of occupancy or utilization;
- (d) the amount of long-term debt incurred;
- (e) the percentage of revenue from commercially insured patients;
- (f) the annual operating surplus (or deficit);
- (g) new services; and
- (h) investment in infrastructure.

7. All documents analyzing the efficiencies that would or could be achieved through any merger, acquisition or affiliation involving Your Hospital and any other hospital, hospital system or health care facility.

8. All documents (including annual physician rosters) describing which physicians have admitting privileges at Your Hospital and for each of these physicians any other hospital in which the physician has admitting privileges.

9. Documents (in machine readable form if available) sufficient to determine which physicians with admitting privileges at Your Hospital maintain an office in the Geographic Area or have admitting privileges at any hospital in the Geographic Area and, as to each such physician, documents sufficient to establish:

- (a) the location of the physician's office or offices;
- (b) the physician's medical specialty;
- (c) the physician's Universal Provider Identification Number;
- (d) the physician's Illinois license number;
- (e) any other identification number your plan assigns to the physician;
- (f) the number of admissions that the physician made each year; and
- (g) the total amount billed or paid each year as a result of that physician's

admissions, including but not limited to amount per payor per managed health care plan.

10. A representative sample of all advertising and promotional literature used by Your Hospital.

11. All documents referring or relating in any manner to the ENH/Highland Park Transaction.

12. Documents sufficient to determine for patients of Your Hospital for each year: (a) the total number of discharges, (b) the total number of discharges of managed care patients, and (c) the total number of inpatient days, (d) the total number of inpatient days of managed care patients, and (e) the total number of discharges of patients whose hospital charges were paid by

commercial third party payors. In addition, documents sufficient to determine the total billed charges for each of those categories of patients, including, but not limited to, total billed charges by payor by managed health care plan.

13. All documents referring or relating in any manner to the distinction between primary, secondary or tertiary services offered at hospitals or other health care facilities in a managed health care network.

14. All documents relating to any study, analysis, report, summary or tabulation regarding any characteristic of any patients admitted or discharged from any hospital in the Geographic Area, including such characteristics as: age; place of residence; type of admission; principal diagnosis; procedures performed; charges; admitting physician, physician group or physician organization; category of payor or third party payor affiliation.

15. All documents relating to any communication between Your Hospital and any person owning, operating or representing any other hospital in the Geographic Area regarding any potential relationship or affiliation between the hospitals or regarding any health care service, including all documents reflecting any negotiations with Third Party Payer undertaken by any such affiliated entity, if any.

16. Documents sufficient to determine the total number of admissions made, the aggregate total billed charges, and the revenue collected each year for any third party payor or employer.

17. All documents referring or relating in any manner to any offer to or by any managed care company or third party payor to designate Your Hospital as its sole or exclusive provider for any category or service or for any geographic area.

18. All documents referring or relating to any refusal by ENH or Your Hospital to negotiate or agree upon terms with any managed care company or third party payor or to terminate its relationship with any third party payor.

19. All documents relating to the Northwestern Healthcare Network since its inception.

20. All documents relating to the marketability of Your Hospital to any third party payor, including all documents relating to the marketability of Your Hospital in affiliation with any other hospital or medical group, and the ability of such an affiliated entity to negotiate managed care contracts.

21. All documents relating to the marketability of any third party payor plans depending on the inclusion or exclusion of any hospital in the Geographic Area.

22. All documents (including models) that refer or relate to the relationship, if any, between (a) operating costs at Your Hospital and/or rates charged by Your Hospital, and (b) quality of care provided at Your Hospital.

23. All documents referring or relating to different billing methodologies used or considered by Your Hospital (including, but not limited to, discount list pricing and per diem pricing) and the reasons for using or rejecting such billing methodologies.

24. All documents sufficient to show any increase in Your Hospital's operating costs and salary expenses from January 2000 to the present, and any corresponding increase in Your Hospital's rates.

25. All documents reflecting any increase in Your Hospital's billing rates (charges, contractual rate increases, increases in adjusted patient revenue per admission) of more than 20% at one time or in the aggregate over the course of a year.

26. To the extent not covered by one of the requests above, all documents reflecting any negotiations between your hospital and any managed care company, including all documents relating to any managed care company's decision to terminate or otherwise discontinue any contract with Your Hospital.

27. All documents relating to the source of critical paths for services or best practices that Your Hospital has adopted or considered.

28. All documents relating to traffic patterns or driving time which may affect Your Hospital's ability to seek patients.

29. All documents referring or relating to any changes in your strategic pricing,

30. All documents referring or relating to any changes made by Your Hospital in response to cuts in Medicare reimbursement rates, including but limited to all documents relating to changes in discounting.

31. Documents sufficient to show changes in your charge master.

DC:348939.20



# SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

<b>1. TO</b> ADVOCATE HEALTH AND HOSPITALS CORP: RAVENSWOOD HOSPITAL MEDICAL CENTER c/o John E. Blair 4550 N. Winchester Avenue Chicago, IL 60640-5205	<b>2. FROM</b>  UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
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This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<b>3. PLACE OF PRODUCTION OR INSPECTION</b>  Winston & Strawn LLP 1400 L Street, N.W. Washington, D.C. 20005	<b>4. MATERIAL WILL BE PRODUCED TO</b> David Dahlquist, Esq. <hr/> <b>5. DATE AND TIME OF PRODUCTION OR INSPECTION</b> May 6, 2004
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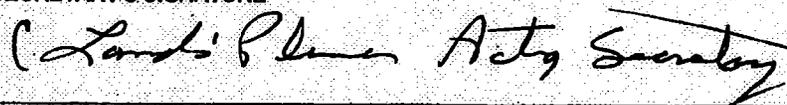
**6. SUBJECT OF PROCEEDING**

In the Matter of Evanston Northwestern Healthcare Corporation, et al., Docket No. 9315

**7. MATERIAL TO BE PRODUCED**

See Attached Schedule A

<b>8. ADMINISTRATIVE LAW JUDGE</b>  The Honorable Stephen J. McGuire  Federal Trade Commission Washington, D.C. 20580	<b>9. COUNSEL REQUESTING SUBPOENA</b> Michael L. Sibarium Charles B. Klein Winston & Strawn LLP 1400 L Street, N.W. Washington, D.C. 20005
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<b>DATE ISSUED</b>  APR 8 2004	<b>SECRETARY'S SIGNATURE</b> 
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### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by O the Paperwork Reduction Act of 1980.

ILL-STATE LEGAL<sup>®</sup>

**EXHIBIT**

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**SCHEDULE A**  
**INSTRUCTIONS**

- A. Unless otherwise specified, the time period addressed by this Schedule is January 1, 1997 through the present day. All references to year refer to a calendar year.
- B. If you have produced documents responsive to this Schedule in the course of the pre-complaint investigation of this matter, FTC File No. 0110234, those documents need not be produced again so long as such documents are identified by Bates range or comparable means in your response to this subpoena.
- C. If any document requested is withheld pursuant to a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this Subpoena. In addition, you must submit, together with the claim of privilege, a log stating the following information for each data item withheld: (a) the specifications and sub-specifications for which the data is responsive; (b) the type or specific subject matter, and date of the data; (c) the names, addresses, positions, and organizations of all authors and recipients of the data; and (d) the specific grounds for claiming that the data is privileged with sufficient particularity and detail to permit the Administrative Law Judge to adjudicate the validity of such claim. If only some portion of any responsive information or data is privileged, all non-privileged portions of the information or data must be submitted.
- D. With respect to specific documents produced in response to this Schedule, each document provided shall be complete and, unless privileged, unredacted and submitted as found in your files (e.g. documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in such form.) Your Hospital 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 Your Hospital stating that the copies are true, correct and complete copies of the original documents.

E. Each document produced by you in response to this Schedule should be marked with corporate identification and consecutive document control numbers. In addition, all documents produced in response to the Schedule shall be organized and labeled to correspond with each request or any part thereof. To the extent you have produced documents on the pre-complaint investigation of this matter, FTC File No. 0110234, please use a different pre-fix for documents produced in response to this Schedule.

F. In the event that any document referred to or identified has been destroyed or otherwise disposed of, that document is to be identified by (i) the author; (ii) the addressee, including persons to whom blind copies were addressed; (iii) the date; (iv) the subject matter; (v) the number of pages, attachments or appendices; (vi) all persons to whom the document was distributed, showed or explained; (vii) a description of the circumstances under which the document was destroyed or disposed of; (viii) the date of destruction or other disposition; (ix) the person who destroyed or disposed of the document; and (x) the person who directed or authorized such destruction or disposition.

G. This Schedule is continuing and any document obtained subsequent to production that would have been produced had it been available or its existence been known at the time of production, shall be produced forthwith.

H. This Schedule is intended to include all requested documents in the possession, custody or control of Your Hospital or any other person acting or purporting to act on its behalf, wherever such documents are located and by whomever prepared.

I. Reference to an individual shall also refer to that individual's predecessors and successors in interest, direct or indirect, and his or her heirs, employees, assigns, trusts, estates, attorneys, and agents.

J. Reference to an entity shall also refer to that entity's companies, corporations, divisions, departments, associations, partnerships, joint ventures, trusts, subsidiaries, affiliates, and any other forms of business or commercial organization or arrangement, predecessors and successors in interest, direct or indirect, and its past, present and future partners, associates, officers, directors, shareholders, principals, employees, representatives, assigns, advisors, attorneys and agents.

K. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive. The word "including" shall be construed to mean without limitation. The terms "each" and "all" are to be constructed as a request that every document or piece of information be identified separately.

L. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive

M. The singular includes the plural, and vice versa.

N. The production of documents pursuant to this subpoena is subject to the terms and conditions of the attached Protective Order.

O. Any questions you have relating to the scope or meaning of anything in this Schedule or any suggestions for possible modifications thereto should be directed to David E. Dahlquist at (312) 558-5660 or ddahlquist@winston.com. A response to this Subpoena shall be addressed to the attention of David E. Dahlquist, Winston & Strawn LLP, 35 West Wacker Drive, Chicago, IL 60601-9703.

## DEFINITIONS

A. The terms "constitute," "contain," "discuss," "analyze," or "relate to" mean constituting, reflecting, respecting, regarding, concerning, pertaining to, referring to, relating to, stating, describing, recording, noting, embodying, memorializing, containing, mentioning, studying, assessing, analyzing or discussing.

B. The term "document" is used herein in the broadest sense permissible under Federal Trade Commission Rule of Practice 3.34(b) and includes, without limitation, writings, drawings, graphs, charts, handwritten notes, films, photographs, audio and video recordings and any such representations stored on a computer, a computer disk, CD-ROM, magnetic or electronic tape, or any other means of electronic storage, and other compilations from which information can be obtained in machine-readable form (translated, if necessary, into reasonably usable form by the person subject to the subpoena). 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 your possession, custody or control.

C. The term "ENH" means Evanston Northwestern Healthcare Corporation (including Evanston Hospital, Glenbrook Hospital, and Highland Park Hospital), its 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.

D. The term "ENH/Highland Park transaction" means merger between Evanston Northwest Healthcare Corporation and Highland Park Hospital in or about January 2000.

E. The term "ENH Medical Group" means ENH Medical Group, Inc., its predecessors and affiliates.

F. The term "Geographic Area" means Lake, Cook, Kane, Kendall, and McHenry counties in Illinois.

G. The term "health care facility" means a hospital, health maintenance organization facility, ambulatory care center, first aid or other clinic, urgent care center, free-standing emergency care center, imaging center, ambulatory surgery center and all other entities that provide health care services.

H. The term "health care service" means a medical or surgical service or procedure performed at a health care facility.

I. The term "hospital" is a type of health care facility that provides, among other services, inpatient health care services.

J. The term "Highland Park" means Highland Park Hospital, its parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

K. The term "licensed beds" means beds recognized, authorized, or approved by the State of Illinois.

L. The term "third party payor" means a person other than a natural person that pays any health care expenses of any other person, and all of its directors, officers, employees, agents and representatives. Third party payor includes, but is not limited to: Blue Cross and Blue Shield plans, commercial insurance companies, health maintenance organizations, preferred provider organizations, competitive medical plans, union trust funds, multiple employer trusts, corporate or governmental self-insured health benefit plans, Medicare, Medicaid, or CHAMPUS.

M. The terms "you" and "Your Hospital" mean Ravenswood Hospital Medical Center.

**DOCUMENTS TO BE PRODUCED**

1. All documents referring or relating in any manner to any plan or proposal between Your Hospital and any other health care facility relating to any affiliation, any multi-institutional arrangement, or any sharing or allocation of services, equipment or facilities.
2. All contracts between Your Hospital and any third party payor, including all amendments, appendices or related documents reflecting any contract terms.
3. All documents referring or relating in any manner to any plan, proposal or strategy for maintaining or increasing the number of patients treated at facilities of Your Hospital, including but not limited to any plan, proposal or strategy for expanding or constructing any structures, or for increasing quality of care at your hospital.
4. All documents relating to competition in the provision of any health care service, including, but not limited to, market studies, forecasts, and surveys, and all other documents relating to:
  - (a) the market share or competitive position of Your Hospital, ENH or the competitors of either hospital;
  - (b) the quality of care provided by Your Hospital, ENH or the competitors of either hospital;
  - (c) the relative strength or weakness of hospitals providing any health care service;
  - (d) supply and demand conditions;

- (e) hospital preferences or perceptions of consumers, patients, or physicians (including, but not limited to, patient satisfaction surveys);
- (f) the preferences of third party payors for hospitals;
- (g) Your Hospital's marketing plans, brochures and strategic plans;
- (h) any comparisons of Your Hospital's contracted hospital rates with other hospital's rates; or
- (i) any comparisons of Your Hospital's costs per patient discharge with those of any competing hospital.

5. All documents referring or relating in any manner to any proposed, planned or actual shift or diversion of patients by any third party payor to or from any hospital.

6. Documents pertaining to Your Hospital that are sufficient to determine for the years 1995 to the present and sufficient to project through 2006:

- (a) the number of licensed beds;
- (b) the number of staffed beds;
- (c) the level of occupancy or utilization;
- (d) the amount of long-term debt incurred;
- (e) the percentage of revenue from commercially insured patients;
- (f) the annual operating surplus (or deficit);
- (g) new services; and
- (h) investment in infrastructure.

7. All documents analyzing the efficiencies that would or could be achieved through any merger, acquisition or affiliation involving Your Hospital and any other hospital, hospital system or health care facility.

8. All documents (including annual physician rosters) describing which physicians have admitting privileges at Your Hospital and for each of these physicians any other hospital in which the physician has admitting privileges.

9. Documents (in machine readable form if available) sufficient to determine which physicians with admitting privileges at Your Hospital maintain an office in the Geographic Area or have admitting privileges at any hospital in the Geographic Area and, as to each such physician, documents sufficient to establish:

- (a) the location of the physician's office or offices;
- (b) the physician's medical specialty;
- (c) the physician's Universal Provider Identification Number;
- (d) the physician's Illinois license number;
- (e) any other identification number your plan assigns to the physician;
- (f) the number of admissions that the physician made each year; and
- (g) the total amount billed or paid each year as a result of that physician's

admissions, including but not limited to amount per payor per managed health care plan.

10. A representative sample of all advertising and promotional literature used by Your Hospital.

11. All documents referring or relating in any manner to the ENH/Highland Park Transaction.

12. Documents sufficient to determine for patients of Your Hospital for each year: (a) the total number of discharges, (b) the total number of discharges of managed care patients, and (c) the total number of inpatient days, (d) the total number of inpatient days of managed care patients, and (e) the total number of discharges of patients whose hospital charges were paid by

commercial third party payors. In addition, documents sufficient to determine the total billed charges for each of those categories of patients, including, but not limited to, total billed charges by payor by managed health care plan.

13. All documents referring or relating in any manner to the distinction between primary, secondary or tertiary services offered at hospitals or other health care facilities in a managed health care network.

14. All documents relating to any study, analysis, report, summary or tabulation regarding any characteristic of any patients admitted or discharged from any hospital in the Geographic Area, including such characteristics as: age; place of residence; type of admission; principal diagnosis; procedures performed; charges; admitting physician, physician group or physician organization; category of payor or third party payor affiliation.

15. All documents relating to any communication between Your Hospital and any person owning, operating or representing any other hospital in the Geographic Area regarding any potential relationship or affiliation between the hospitals or regarding any health care service, including all documents reflecting any negotiations with Third Party Payer undertaken by any such affiliated entity, if any.

16. Documents sufficient to determine the total number of admissions made, the aggregate total billed charges, and the revenue collected each year for any third party payor or employer.

17. All documents referring or relating in any manner to any offer to or by any managed care company or third party payor to designate Your Hospital as its sole or exclusive provider for any category or service or for any geographic area.

18. All documents referring or relating to any refusal by ENH or Your Hospital to negotiate or agree upon terms with any managed care company or third party payor or to terminate its relationship with any third party payor.

19. All documents relating to the Northwestern Healthcare Network since its inception.

20. All documents relating to the marketability of Your Hospital to any third party payor, including all documents relating to the marketability of Your Hospital in affiliation with any other hospital or medical group, and the ability of such an affiliated entity to negotiate managed care contracts.

21. All documents relating to the marketability of any third party payor plans depending on the inclusion or exclusion of any hospital in the Geographic Area.

22. All documents (including models) that refer or relate to the relationship, if any, between (a) operating costs at Your Hospital and/or rates charged by Your Hospital, and (b) quality of care provided at Your Hospital.

23. All documents referring or relating to different billing methodologies used or considered by Your Hospital (including, but not limited to, discount list pricing and per diem pricing) and the reasons for using or rejecting such billing methodologies.

24. All documents sufficient to show any increase in Your Hospital's operating costs and salary expenses from January 2000 to the present, and any corresponding increase in Your Hospital's rates.

25. All documents reflecting any increase in Your Hospital's billing rates (charges, contractual rate increases, increases in adjusted patient revenue per admission) of more than 20% at one time or in the aggregate over the course of a year.

26. To the extent not covered by one of the requests above, all documents reflecting any negotiations between your hospital and any managed care company, including all documents relating to any managed care company's decision to terminate or otherwise discontinue any contract with Your Hospital.

27. All documents relating to the source of critical paths for services or best practices that Your Hospital has adopted or considered.

28. All documents relating to traffic patterns or driving time which may affect Your Hospital's ability to seek patients.

29. All documents referring or relating to any changes in your strategic pricing,

30. All documents referring or relating to any changes made by Your Hospital in response to cuts in Medicare reimbursement rates, including but limited to all documents relating to changes in discounting.

31. Documents sufficient to show changes in your charge master.

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