

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



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

Docket No. 9315  
(Public Record Version)

**RESPONDENTS' ANSWERS AND OBJECTIONS TO  
COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES**

Pursuant to the Federal Trade Commission's Rules of Practice ("Rules"), 16 C.F.R. § 3.35(a)(2), the Second Revised Scheduling Order dated June 15, 2004, and the parties' agreement as memorialized in the letter dated August 10, 2004, from Charles B. Klein to Thomas Brock, and amended on August 27, 2004, Respondents Evanston Northwestern Healthcare Corporation ("ENH") and ENH Medical Group, Inc. ("ENH Medical Group") (collectively, "Respondents") hereby answer and object to Complaint Counsel's First Set of Interrogatories to Respondents.

**GENERAL OBJECTIONS**

The following General Objections apply to Complaint Counsel's interrogatories and are incorporated by reference into the answers contained herein. The assertion of the same, similar, or additional objections, or the provision of partial answers in response to Complaint Counsel's particular interrogatories, does not waive any of ENH's or ENH Medical Group's General Objections as set forth below.

1. Respondents object to the interrogatories to the extent they seek information that is protected from disclosure under the attorney-client privilege, the work product doctrine, the joint-defense doctrine, the common-interest doctrine, or any other applicable privilege, law, rule, or immunity.

2. Respondents object to the interrogatories to the extent they seek trade secret, proprietary, confidential, financial or commercially sensitive information, the disclosure of which could negatively impact Respondents' competitive or business position or result in a breach by Respondents of an obligation to a third-party to maintain such information confidential. Such information will be produced under the Protective Order entered in this case.

3. Respondents object to the interrogatories to the extent they seek information organized by calendar year. Respondents organize information gathered in the ordinary course of their respective businesses by fiscal year, which for both Respondents runs from October 1 to September 30.

4. Respondents object to the interrogatories to the extent they seek information that is not relevant to the subject matter of this litigation and not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any Respondent.

5. Respondents object to the interrogatories to the extent they are overbroad, unduly burdensome, or require unreasonable efforts or expense on behalf of Respondents.

6. Respondents object to the interrogatories to the extent they are vague or ambiguous.

7. Respondents object to the interrogatories to the extent they require answers greater than, beyond the requirements of, and/or at variance to the Rules.

8. Respondents object to the interrogatories to the extent they seek the premature discovery of expert testimony. Respondents will submit expert reports and make their experts available for deposition pursuant to the Second Revised Scheduling Order.

9. Respondents object to the interrogatories to the extent they seek to impose an obligation on Respondents to provide information for or on behalf of any person or entity other than Respondents, and/or seek information that is not in Respondents' possession, custody, or control.

10. Respondents object to the interrogatories to the extent the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. *See* 16 C.F.R. § 3.31(c)(1)(i).

11. Respondents object to the interrogatories to the extent that Complaint Counsel has had ample opportunity by discovery in the action to obtain the information sought. *See id.* § 3.31(c)(1)(ii).

12. Respondents object to the interrogatories to the extent they do not adequately define terms used in them.

13. Respondents object to the interrogatories to the extent the burden of deriving or ascertaining answers to interrogatories is substantially the same for Complaint Counsel as for Respondents. *See id.* § 3.35(c). Respondents already have produced in the underlying investigation or in the current litigation documents or information that provide information sufficient to answer parts or all of certain interrogatories. Respondents further state that, in addition to the following answers, information relating to the interrogatories may be found in the documents produced by, answers supplied by, information received or gleaned from, or

testimony taken of, any party or person in connection with the underlying investigation or the current litigation.

The following answers are based on Respondents' current knowledge. Additional information may be in documents that Respondents have not yet reviewed or received, or with witnesses Respondents have not yet interviewed and/or deposed. Respondents reserve the right to supplement their answers up to and through any hearing in this matter.

Subject to and without waiving these General Objections, or any other objection or claim of privilege, Respondents hereby answer and object to Complaint Counsel's interrogatories as follows.

### **ANSWERS TO INTERROGATORIES**

1. Identify the line(s) of commerce, as that term is used in section 7 of the Clayton Act, 15 U.S.C. § 18, in which Respondent Hospitals do business.

Answer: Respondents object to this interrogatory on the ground that it is vague, overbroad, and unduly burdensome. Respondents further object on the ground that this interrogatory calls for a legal conclusion concerning the interpretation of the Clayton Act, thus implicating Respondents' attorney-client and/or work product privileges. Moreover, Respondents object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents, as Respondents have produced during discovery documents concerning, and have made available for depositions witnesses who have testified about, Respondent Hospitals' businesses and operations. In addition, Respondents object to this interrogatory on the ground that Complaint Counsel is impermissibly attempting to shift its burden to prove its claims based on Section 7 of the Clayton Act to Respondents, in violation of 16 C.F.R. § 3.43(a). Finally, Respondents object to this interrogatory to the extent that it seeks the premature discovery of expert testimony.

2. For each line of commerce identified in your response to Interrogatory No. 1, identify the section(s) of the country, as that term is used in section 7 of the Clayton Act, 15 U.S.C. § 18, in which Respondent Hospitals do business.

Answer: Respondents object to this interrogatory on the ground that it is vague, overbroad and unduly burdensome. Respondents further object on the ground that this interrogatory calls for a legal conclusion concerning the interpretation of the Clayton Act, thus implicating Respondents' attorney-client and/or work product privileges. Moreover, Respondents object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents, as Respondents have produced during discovery documents concerning, and have made available for depositions witnesses who have testified about, Respondent Hospitals' businesses and operations. In addition, Respondents object to this interrogatory on the ground that Complaint Counsel is impermissibly attempting to shift its burden to prove its claims based on Section 7 of the Clayton Act to Respondents, in violation of 16 C.F.R. § 3.43(a). Finally, Respondents object to this interrogatory to the extent that it seeks the premature discovery of expert testimony.

3. For each "significant procompetitive efficiency," as that term is used in the Sixth Defense in the Answer, that Respondent Hospitals purportedly accomplished through the Merger, identify the nature of the efficiency, the dollar amount of savings, the methodology Respondents used to calculate that amount, Respondents' basis for attributing the efficiency to the Merger, and the individual(s) with the information relevant to this methodology and data used to make this calculation.

Answer: Respondents object to this interrogatory to the extent that it is overbroad and unduly burdensome. Respondents further object to this interrogatory to the extent that it seeks the premature discovery of expert testimony.

**REDACTED**

4. For each "significant improvement in the quality of patient care," as that term is used in the Seventh Defense in the Answer, that Respondent Hospitals purportedly accomplished through the Merger, identify the nature of the improvement, the magnitude of that improvement, the methodology Respondents used to calculate that magnitude, Respondents' basis for

attributing the improvement to the Merger, and the individual(s) with the information relevant to the methodology and data used to make this calculation.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents further object to this interrogatory to the extent that it seeks the premature discovery of expert testimony. Respondents further object that the information sought in this interrogatory may be more readily ascertainable from the documents produced from the files and/or transcripts of depositions of various ENH employees, including **REDACTED**. Finally, Respondents object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents, as Respondents have produced during discovery documents from the files of **REDACTED**, and other witnesses having information relating to this interrogatory. *See* 16 C.F.R. §3.35(c).

Notwithstanding and subject to these objections and the General Objections listed above, Respondents answer that as a result of the merger quality of patient care has been improved at Respondent Hospitals. Specifically, the increased quality of patient care at Respondent Hospitals may be evidenced via several quality measures, including, but not limited to, measurements of structures, processes, and outcomes of care. Structural measures assess characteristics of physicians, nurses, institutions or systems of care. For hospitals they include, for example, the number of beds, occupancy rate, medical school affiliation, and the availability of equipment, services, and technologies. Processes of care are strategies and protocols to prevent, cure, or ameliorate disease. Finally, outcome measures may quantify whether the outcomes or results are adequate given the current knowledge and technical capabilities available.

Respondent Hospitals have improved significantly as quantified by the measurements cited above in many specific areas including, but not limited to, enhancements in obstetrical care, nursing, physical plant and facilities, the addition of interventional cardiology, cardiac surgery, laboratory services, pharmacy services, radiology, medical staff integration, intensive care, quality assurance and improvement protocols, and oncology and emergency services.

5. Identify all contracts relating to the provision of medical services negotiated or entered into by the Northwestern Healthcare Network and, for each such contract, set forth the total dollar volume of sales by Respondent Hospitals pursuant to the contract for each year from 1989 through 2001.

Answer: Notwithstanding and subject to the General Objections listed above, Respondents state that the parties have entered into a stipulation concerning interstate commerce and agreed that Respondents will withdraw the Second Defense set forth in their Answer. Accordingly, the parties have agreed that no answer to this interrogatory is required.

6. Identify each way in which the State of Illinois "approved" the Merger, as that term is used in the Ninth Defense in the Answer.

Answer: Respondents object to this interrogatory on the ground that it calls for legal conclusions. Notwithstanding and subject to this objection and the General Objections listed above, Respondents answer that the Illinois Health Facilities Planning Board reviewed the merger during the certificate of exemption process under the Health Facilities Planning Act, section 1130.520. The Board issued a certificate of exemption to Evanston Northwestern Healthcare Corporation on November 30, 1999, in connection with the Corporation becoming the owner of HPH. The exemption number is E-044-99.

7. Identify all good faith but unsuccessful efforts undertaken by HPH to elicit reasonable offers for the acquisition of its assets by (or its merger with) another company as an alternative to its merger with ENH, including the name of the potential acquirer or merger partner, the terms of the offer(s) and counteroffers(s), the date of such efforts, the reasons the efforts were unsuccessful, and the names of individuals at HPH and any other company with information relating to these matters.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c). Respondents further object that the information sought in this interrogatory may be more readily ascertainable from depositions.

**REDACTED**

**REDACTED**

8. Identify all financial obligations that, at the time of the Merger (or soon thereafter), HPH would have been unable to meet, the basis for Respondents' conclusion that HPH would have been unable to meet those obligations, and individual(s) with information relating to this matter.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents further object that the information sought in this interrogatory may be more readily ascertainable from the depositions of **REDACTED**, as well as additional depositions that have yet to occur in the discovery process. *See* 16 C.F.R. § 3.31(c)(1)(i). Finally, Respondents object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See id.* § 3.35(c).

9. In each fiscal year from 1998 through the present, identify each health plan from which either ENH or ENH Medical Group received more than \$1 million in annual revenues for hospital services, the aggregate amount of revenues from each health plan, the method (e.g., electronic transfer or United States Mail) by which Respondents rendered the bill to the health plan, the location of the office of the health plan to which the bill was delivered, the method (e.g., electronic transfer or United States Mail) by which the health plan made payment to Respondents, the name and the location of the bank or other depository used by the health plan to make payment to Respondents, and the name and the location of the bank or other depository used by the Respondents to which payment was transferred.

Answer: Notwithstanding and subject to the General Objections listed above, Respondents state that the parties have entered into a stipulation concerning interstate commerce and agreed that no answer to this interrogatory is required.

10. For each year from 1998 through 2003, identify the aggregate amount of revenues that each of the Respondent Hospitals received from the federal Medicare program and from the Illinois Medicaid program.

Answer: Notwithstanding and subject to the General Objections listed above, Respondents state that the parties have entered into a stipulation concerning interstate commerce and agreed that no answer to this interrogatory is required.

11. Identify each contract to which ENH Medical Group was a party for the provision of and payment for medical services.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents also object to this interrogatory to the extent it seeks information that is not relevant to the subject matter of this litigation and not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents, as Respondents have produced during discovery all of ENH Medical Group's contracts concerning medical services. *See* 16 C.F.R. § 3.35(c).

Notwithstanding and subject to these objections and the General Objections listed above, Respondents are attaching as Exhibit 2 an index of ENH Medical Group's contracts with the payors identified in Complaint Counsel's Complaint and discovery requests.

12. Identify each health plan to which ENH Medical Group delivered or attempted to deliver one or more of the documents denominated ENH RG 006953 - ENH RG 007308.

Answer: Respondents object to this interrogatory on the ground that it is unintelligible, as they have not produced during discovery documents having a Bates-range of "ENH RG 006953 - ENH RG 007308."

13. Identify each Independent Physician who utilized in the delivery of physician services in his or her private practice a clinical data record system developed by, licensed to, or administered by Respondents. (For the purposes of this interrogatory, Respondents should not include clinical data record system(s) used by an Independent Physician exclusively in the provision of care to patients during their hospitalization at Respondent Hospitals.)

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c). Respondents further object on the ground that this interrogatory seeks to impose an obligation on Respondents to provide information for or on behalf of any person or entity other than Respondents, and/or seeks information that is not in Respondents' possession, custody, or control. *See id.* § 3.31(c)(1)(i). Finally, Respondents object to this interrogatory to the extent that it seeks the premature discovery of expert testimony.

**REDACTED**

14. Identify each clinical protocol that was developed by ENH Medical Group to assess the provision of care by an Independent Physician in his or her private practice. (For the purposes of this interrogatory, Respondents need not include the clinical protocols that were used exclusively for the assessment of physicians who were employees of Respondents or Faculty Practice Associates.)

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c). Respondents further object to this interrogatory to the extent that it seeks the premature discovery of expert testimony.

**REDACTED**

15. Identify the network utilization standards, quality goals, benchmarks, or other measurable performance goals that ENH Medical Group developed for and employed in assessing the provision of care by independent physicians.

Answer: Respondents object to this interrogatory on the grounds that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c). Respondents further object to this interrogatory to the extent that it seeks the premature discovery of expert testimony.

**REDACTED**

16. Identify each instance in which ENH Medical Group terminated the participation of or otherwise disciplined an Independent Physician for his or her failure to meet the network utilization standards, quality goals, benchmarks, or other measurable performance goals identified in response to Interrogatory No. 15.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c).

**REDACTED**

17. Identify each way in which network utilization standards, quality goals, benchmarks, or other measurable performance goals employed by the ENH Medical Group improved the quality of care, reduced the cost of care, or otherwise improved the services delivered by the independent physicians affiliated with the ENH Medical Group.

Answer: Respondents object to this interrogatory on the grounds that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c). Respondents further object to this interrogatory to the extent that it seeks the premature discovery of expert testimony.

**REDACTED**

18. Identify each employment position at Respondent Hospitals that was eliminated as part of efficiency measures resulting from the Merger and, for each such position, identify the last person to hold that position, the aggregate compensation paid to that individual (including fringe benefits), and the basis for your conclusion that the elimination of that position was attributable to the Merger.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c).

**REDACTED**

19. Identify all reports, both before and after the Merger, that Respondent Hospitals generated to track inpatient costs by service or ancillary line on a monthly basis.

Answer: Respondents object to this interrogatory on the ground that the term "reports" is undefined, ambiguous, and vague. Respondents also object to this interrogatory on the ground that it would be unduly burdensome to identify all pre- and post-merger "reports" tracking inpatient costs by service or ancillary line on a monthly basis. Respondents further object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents, as Respondents have produced during discovery all documents detailing their costs. *See* 16 C.F.R. § 3.35(c).

**REDACTED**

20. For each Independent Physician, identify all contracts to which ENH Medical Group was a party under which the Independent Physician agreed to be compensated or was compensated on a prospectively-established fixed payment (i.e., a per member per month or other capitated rate) and, for each such contract, identify the Independent Physician's dates of participation in the contract and the formula that was used to calculate the payment to that Independent Physician.

Answer: Respondents object to this interrogatory on the ground that it is ambiguous, overbroad, unduly burdensome, and vague. Respondents also object to this interrogatory to the extent it seeks information that is not relevant to the subject matter of this litigation and not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents, as Respondents have produced during discovery all of ENH Medical Group's contracts with independent physicians. *See* 16 C.F.R. § 3.35(c). Finally, Respondents object to supplying any information sought in this interrogatory other than Bates-ranges for contracts to which ENH Medical Group was a party, as those documents speak for themselves.

Notwithstanding and subject to these objections and the General Objections listed above, Respondents refer to Exhibit 2 attached hereto, which is an index of ENH Medical Group's contracts with the payors identified in Complaint Counsel's Complaint and discovery requests.

21. Identify each instance in which, after the Merger, Respondent Hospitals proposed renegotiating a contract with a health plan and, in each such instance, identify the proposal(s) made by Respondent Hospitals, the counter-proposals made by the health plan, and the final outcome of the negotiations.

Answer: Respondents object to this interrogatory on the grounds that the terms "proposal(s)," "counter-proposals," and "final outcome" are undefined, ambiguous, and vague. Respondents also object to this interrogatory on the grounds that it is overbroad and unduly burdensome. Respondents further object to this interrogatory to the extent it seeks information that is not relevant to the subject matter of this litigation and not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any Respondent. In addition, Respondents object on the ground that it would be unduly burdensome to identify "each instance" after the merger when they proposed renegotiating a contract. Finally, Respondents object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents, as Respondents have produced during discovery all documents concerning post-merger contracts for medical services. *See* 16 C.F.R. § 3.35(c).

## REDACTED

22. For each document listed below, identify each contract that the document amended, renewed, or replaced; the hospital(s) that were parties to that contract, the payer that was the party to that contract; the particular plan to which that contract applied; the date that contract was entered; the effective date of that contract, and the name and the Bates number or CX number assigned to that contract:

- (a) CX - 05008 (i.e., ENH JL 006366 - 006376).
- (b) CX - 5098 (i.e., ENH JL 006586 - 006587).
- (c) ENH JL 003585 - 003588.
- (d) ENH JH 010017 - 010018.
- (e) ENHL BW 017671 - 017673

- (f) CX - 5075 (i.e., ENH JL 000874 - 000893).
- (g) ENH JL 000729 - 000748.
- (h) ENH JL 008184 - 008187.
- (i) ENH JL 001908 - 001912.
- (j) ENH JL 008106 - 008131.
- (k) ENH JL 001877 - 001878.

Answer: Respondents object to this interrogatory on the ground that it calls for legal conclusions, and that the contract documents at issue speak for themselves. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c).

**REDACTED**

23. Identify each instance in which, pursuant to a consent to assignment, amendment, or similar agreement, HPH was compensated pursuant to a contract to which ENH was a party, when the payment received by HPH was based on the rates in effect for ENH immediately before the Merger, and in each such instance, set forth the date of the assignment or amendment, the payer involved, the particular payer plan, the name of the contract involved, the effective date of the contract, the date the contract was entered, and the name and the Bates number or CX number assigned to the contract.

Answer: Respondents object to this interrogatory on the ground that it is ambiguous and vague. Respondents also object on the ground that this interrogatory is overbroad and unduly burdensome, and seeks information that is not relevant to the subject matter of this litigation and not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any Respondent. In particular, this interrogatory is objectionable because it requires Respondents to identify all consents to assignment, amendments, and similar agreements regardless of whether such contracts have any relation to the allegations in the Complaint, the proposed relief, or Respondents' defenses. Respondents will supply responsive information, if any, only if it relates to a contract between ENH and any of the payors identified in Complaint Counsel's Complaint or discovery requests. Respondents further object that it would be unduly burdensome to "[i]dentify each instance" in which, under a consent to assignment, amendment, or similar agreement, HPH received compensation under an ENH contract at rates in effect for ENH immediately before the Merger. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents, as Respondents have produced during discovery all documents concerning their post-merger assignments and amendments of medical contracts. *See* 16 C.F.R. § 3.35(c). Finally, Respondents object to supplying any information sought in this interrogatory other than Bates-ranges for the relevant consents to assignment, amendments, or similar agreements, and underlying contracts, as those documents speak for themselves.

**REDACTED**

24. Identify each instance in which, pursuant to a consent to assignment, amendment, or similar agreement, ENH was compensated pursuant to a contract to which HPH was a party, when the payment received by ENH was based on the rates in effect for HPH immediately before the Merger, and in each such instance, set forth the date of the assignment or amendment, the payer involved, the particular payer plan, the name of the contract involved, the effective date of the contract, the date the contract was entered, and the name and the Bates number or CX number assigned to the contract.

Answer: Respondents object to this interrogatory on the ground that it is ambiguous and vague. Respondents also object on the ground that this interrogatory is overbroad and unduly burdensome, and seeks information that is not relevant to the subject matter of this litigation and not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any Respondent. In particular, this interrogatory is objectionable because it requires Respondents to identify all consents to assignment, amendments, and similar agreements regardless of whether such contracts have any relation to the allegations in the Complaint, the proposed relief, or Respondents' defenses. Respondents will supply responsive information, if any, only if it relates to a contract between HPH and any of the payors identified in Complaint Counsel's Complaint or discovery requests. Respondents further object that it would be unduly burdensome to "[i]dentify each instance" in which, under a consent to assignment, amendment, or similar agreement, ENH received compensation under an HPH contract at rates in effect for HPH immediately before the merger. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents, as Respondents have produced during discovery all documents concerning their post-merger assignments and amendments of medical contracts. *See* 16 C.F.R. § 3.35(c). Finally, Respondents object to supplying any information sought in this interrogatory other than Bates-ranges for the relevant consents to assignment, amendments, or similar agreements, and underlying contracts, as those documents speak for themselves.

**REDACTED**

25. Identify the principles used by Respondent Hospitals for accounting for contractual allowances and bad debt; the criteria used to determine which accounts receivable are recorded as bad debt; and the circumstances, if any, under which bad debt or contractual allowances are attributed to charity care or some similar account.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c).

**REDACTED**

**REDACTED**

26. For each year in the relevant period, identify the amounts of bad debt and charity care recorded by Respondent Hospitals and the amount of bad debt that was re-recorded as charity care.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or

ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c).

Notwithstanding and subject to these objections and the General Objections listed above, Respondents' answer is detailed in Exhibit 5, which is attached hereto.

27. For each individual employee of Respondents or Faculty Practice Associates who received compensation (including fringe benefits) in excess of \$75,000 in fiscal year 1998, identify the comparable compensation to that employee for each year from fiscal year 1999 through 2004.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c).

Notwithstanding and subject to these objections and the General Objections listed above, Respondents answer is detailed in Exhibit 6, which is attached hereto.

28. Identify all contract terms (including, but not limited to per diem formulas, discount of charges formulas, or stop loss provisions) that affect the total consideration Respondent Hospitals will receive under a contract with a health plan and, for each such factor, set forth the method(s) Respondent Hospitals use for assessing the revenue effects of a change to such contract term on the revenues that Respondent Hospitals will receive under a contract with a health plan.

Answer: Respondents object to this interrogatory on the ground that it is ambiguous and vague. Respondents also object on the grounds that this interrogatory is overbroad and unduly burdensome. For example, it would be unduly burdensome to: (1) identify "all contract terms" affecting consideration received under every contract with every health plan; and (2) set forth "the method(s)" used to assess the effects of every change of every contract term on the revenue received under every contract with every health plan. Respondents further object to this interrogatory to the extent it seeks information that is not relevant to the subject matter of this litigation and not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any Respondent. Respondents also object to this interrogatory to the extent that it seeks the premature discovery of expert testimony. Finally, Respondents object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents, as Respondents have produced during discovery all contracts with health plans for medical services. *See* 16 C.F.R. § 3.35(c).

**REDACTED**

**REDACTED**

29. Identify each instance in which a health plan with which Respondent Hospitals contracts (or has contracted) has used steerage or similar provisions to influence the choice of hospitals by plan enrollees including the precise terms of the steerage provision(s), the health plan that used the steerage provision, the impact of the steerage provisions on the utilization of Respondent Hospitals by enrollees of the health plan, and your basis for attributing such changes in utilization to the steerage or similar provisions.

Answer: Respondents object to this interrogatory on the ground that the term "steerage or similar provisions" is undefined, ambiguous, and vague. Respondents also object on the ground that it would be unduly burdensome to identify "each instance" when a health plan which has contracted with Respondents has used a "steerage provision" to influence plan enrollees. Respondents further object on the ground that the third-party health plans are in a better position than Respondents to answer this interrogatory. *See* 16 C.F.R. § 3.31(c)(1)(i). Respondents further object that Complaint Counsel has equal access to the documents produced by and the depositions of the third-party health plans in this action, and, thus, the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See id.* § 3.35(c). Finally, Respondents object to this interrogatory to the extent that it seeks the premature discovery of expert testimony.

30. For each contract in which Respondent Hospital(s) has furnished services on a capitated or other risk-based arrangement, set forth on a monthly basis, the identity of the company with which the Respondent Hospital(s) contracted, the number of covered lives covered by the contract in that month, the scope of services covered by the contract, and the payment the Respondent Hospital(s) received for those services.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents further object to this interrogatory to the extent it seeks information that is not relevant to the subject matter of this litigation and not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any Respondent. Respondents also object on the ground that it would be

unduly burdensome to: (1) "set forth on a monthly basis" the identity of each company with which Respondents has contracted under a capital arrangement; (2) the number of covered lives covered by that contract; (3) the scope of services of covered by the contract; and (4) the payments received from those services. Respondents further object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents, as Respondents have produced during discovery all of their capitated contracts. *See* 16 C.F.R. § 3.35(c).

## REDACTED

31. For each instance since 1995, identify each payment that Respondent Hospital(s) have received in recognition of meeting utilization goals or targets in the provision of care, including the name of the health plan, independent practice association, or network, the applicable utilization goals or targets, the performance of Respondent Hospital(s) that entitled it to the payment, the total amount of payment, and the formula and amount of distribution of the payment among the Respondent Hospital(s) and any physicians or other entities that received any share of the payment.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c).

Notwithstanding and subject to these objections and the General Objections listed above, Respondents answer that their financial records are not maintained in a manner sufficient to develop a response.

32. For each month since 1995, set forth the payment that Highland Park IPA or ENH Medical Group received, directly or indirectly, from HMO Illinois, on a per member per month basis and on an aggregate basis.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c).

Notwithstanding and subject to these objections and the General Objections listed above, Respondents answer is detailed in Exhibit 8, which is attached hereto.

33. Identify the budget for charity care at each of Respondent Hospitals during the relevant period, including the criteria for establishing the budget, the number of patient days or

dollar amount of charity care actually furnished by Respondent Hospitals; and the reasons for changes (if any) in the budgeted or actual amount of charity care rendered by Respondent Hospitals.

Answer: Respondents object to this interrogatory on the ground that it is overbroad and unduly burdensome. Respondents also object on the ground that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Complaint Counsel as for Respondents. *See* 16 C.F.R. § 3.35(c).

Notwithstanding and subject to these objections and the General Objections listed above, Respondents answer is detailed in Exhibit 9, which is attached hereto.

34. Identify each instance in which the Evanston Healthcare Network terminated the employment of a person employed by Respondent Hospital(s) and, in each such instance, identify the grounds for the termination.

Answer: Notwithstanding and subject to the General Objections listed above, the parties have agreed that Respondents will withdraw the Second Defense set forth in their answer and that no answer to this interrogatory is required.

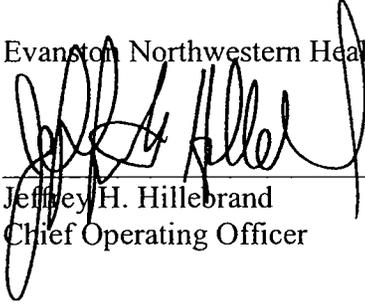
35. Identify each instance in which Respondent Hospital(s) deferred or decided to forego capital or operational expenditures because those expenditures were not approved by Evanston Healthcare Network.

Answer: Notwithstanding and subject to the General Objections listed above, Respondents state that the parties have agreed that Respondents will withdraw the Second Defense set forth in their answer and that no answer to this interrogatory is required.

**VERIFICATION**

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection. Executed on this 23 day of August 2004.

Evanston Northwestern Healthcare Corporation

  
\_\_\_\_\_  
Jeffrey H. Hillebrand  
Chief Operating Officer

STATE OF  
COUNTY OF

Subscribed and Sworn to before me on this 23<sup>rd</sup> day of August 2004.

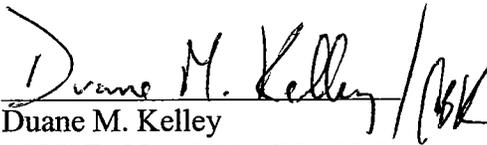
  
\_\_\_\_\_  
Notary Public



My Commission expires:

March 5, 2005

Respectfully Submitted,



Duane M. Kelley  
WINSTON & STRAWN LLP  
35 West Wacker Drive  
Chicago, IL 60601-9703  
(312) 558-5764  
Fax: (312) 558-5700  
Email: dkelley@winston.com

Michael L. Sibarium  
Charles B. Klein  
WINSTON & STRAWN LLP  
1400 L Street, NW  
Washington, DC 20005  
(202) 371-5700  
Fax: (202) 371-5950  
Email: msibarium@winston.com  
Email: cklein@winston.com

*Counsel for Respondents*

**CERTIFICATE OF SERVICE**

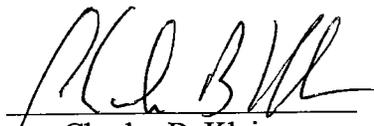
I hereby certify that on September 2, 2004, a copy of the foregoing *Respondents' Answers and Objections to Complaint Counsel's First Set of Interrogatories* was served (unless otherwise indicated) by email and messenger service on:

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)

Thomas H. Brock, Esq.  
Federal Trade Commission  
600 Pennsylvania, Ave. NW (H-374)  
Washington, DC 20580  
tbrock@ftc.gov

Philip M. Eisenstat, Esq.  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Room NJ-5235  
Washington, DC 20580  
peisenstat@ftc.gov

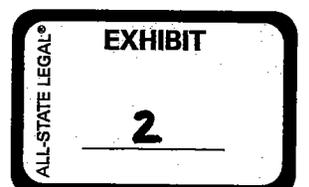
Chul Pak, Esq.  
Assistant Director Mergers IV  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, DC 20580  
cpak@ftc.gov  
(served by email only)

  
Charles B. Klein

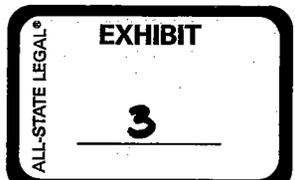
**REDACTED**



**REDACTED**



**REDACTED**



**REDACTED**



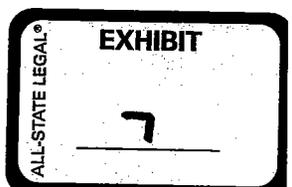
**REDACTED**



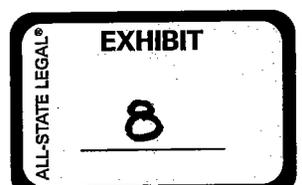
**REDACTED**



**REDACTED**



**REDACTED**



**REDACTED**

