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FILED

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS 06 OCT 26 AM 11:48

WUESTHOFF MEMORIAL HOSPITAL,
INC., d/b/a WUESTHOFF MEDICAL
CENTER-ROCKLEDGE and WUESTHOFF
MEMORIAL HOSPITAL, INC. d/b/a
WUESTHOFF MEDICAL CENTER-
MELBOURNE,

DIVISION OF
ADMINISTRATIVE
HEARINGS

Petitioners,

vs.

DOAH Case No.: 06-0571CON
CON No.: 9881

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

MOTION TO UNSEAL CERTAIN EXHIBITS

Wuesthoff Memorial Hospital, Inc. d/b/a Wuesthoff Medical Center-Rockledge and Wuesthoff Memorial Hospital, Inc. d/b/a Wuesthoff Medical Center-Melbourne (hereinafter collectively referred to as "Wuesthoff"), by and through their undersigned attorneys and pursuant to the "Stipulation Against Unauthorized Use or Disclosure of Confidential Information and As to Use of Materials From Prior Proceedings" (hereafter referred to as the "Confidentiality Agreement"), hereby moves to unseal certain exhibits admitted into evidence at the final hearing in the above-styled cause and as grounds therefore would show:

Background Facts

1. At the final hearing in the above-styled cause, Wuesthoff submitted a notebook in evidence as its Composite Exhibit 94A. This exhibit was admitted through the testimony of Wuesthoff's economist, Dr. David Eisenstadt.

2. Dr. Eisenstadt's entire exhibit was deemed confidential and has been treated as such by Wuesthoff in accordance with the terms of the Confidentiality Agreement.

3. Through this Motion, Wuesthoff seeks to lift the confidentiality designation as to the documents contained behind tabs labeled "Table 15," "Table 16," and "Table 17" of Wuesthoff's Exhibit 94A.¹ The reasons for this Motion are set forth in detail below.

4. The parties to the above styled cause and other related parties entered into the Confidentiality Stipulation in order to facilitate the exchange of certain materials designated "confidential" and "highly confidential" in discovery in this matter and in a separate action pending in the United States District Court for the Middle District of Florida. The Confidentiality Agreement was adopted in the above-styled cause by Order of the Administrative Law Judge ("ALJ") dated March 9, 2006. For ease of reference, another copy of the Confidentiality Stipulation is attached hereto as Exhibit "A."²

5. The Confidentiality Stipulation makes it clear that a confidentiality designation is not a concession of confidentiality by the other party. See para. 4. Likewise, a challenge to a confidentiality designation can be made at any time. See para. 13.

6. The Confidentiality Stipulation provides a process by which the parties can attempt to resolve any disagreements as to whether certain information should remain confidential. Failing agreement of the parties, the Confidentiality Stipulation provides for resolution of the dispute by the ALJ or the Federal Court.

¹ The tables and the related exhibits behind each referenced tab in Wuesthoff 94A will hereafter be referred to as "Table 15", "Table 16" and "Table 17". Additionally, since all parties and the ALJ have a copy of these items, a copy is not attached to this Motion in order to protect their current confidential designation.

² While not a direct signator, AHCA, through counsel, agreed at final hearing to abide by the terms of the Confidentiality Stipulation.

7. Pursuant to paragraph 13 of the Confidentiality Stipulation, Wuesthoff has attempted to reach an agreement with Holmes Regional Medical Center, Inc. ("Holmes") regarding the confidentiality of Tables 15, 16 and 17 but has been unable to do so.

8. In Tables 15 and 16, Dr. Eisenstadt presented a "Commercial HMO/PPO Net Price Comparison" between the Health First and Wuesthoff hospitals. Table 16 is a similar analysis that also adds information from commercial indemnity plans. These two analyses examine average net inpatient revenue on a per discharge and per patient day basis. Table 17 contains a similar analysis for Medicare patients.

9. It is important to recognize that the information contained in Tables 15 and 16 is aggregate data. In other words, it is average net inpatient revenue for all commercial HMO/PPO patients and commercial patients including indemnity, HMO and PPO patients. Because it is aggregate data, no specific amounts paid by any individual managed care plan to any hospital can be identified from the data. This information is a type of average of all plans combined. Table 17 is average net inpatient revenue for Medicare patients and does not even include Medicare managed care patients.

10. Because net inpatient revenue is not publicly reported by hospitals in precisely the form or for some of the time periods used on these exhibits, it could only be obtained through discovery. For example, since Holmes' Prior Year Report filed with AHCA combines information from Holmes and Palm Bay, discovery information was needed to separate that information. Discovery information was also needed in order to have more current data in the exhibits than was publicly available at the time.

11. However, the same type of aggregate information is publicly reported in other forms by hospitals with regard to gross and net inpatient revenues on a routine and regular basis.

By way of example, attached as Exhibit “B” is a copy of Schedule C-3a(rev) for Wuesthoff-Rockledge’s 2005 fiscal year as publicly reported by Wuesthoff in its 2005 Prior Year Report filed with the Agency for Health Care Administration (“AHCA”). That schedule provides inpatient net revenues by payor class. Division by the appropriate number of patient days and discharges provides the same type of information as Tables 15, 16 and 17 although the discovery information was used for reasons such as those listed above.

12. The publicly reported information likewise does not allow a reviewer to determine the amount charged to or paid by any individual managed care plan.

Legal Analysis

13. There is no question that both the Division of Administrative Hearings (“DOAH”) and the AHCA, are each an “agency” within the meaning of Chapter 119, Florida Statutes, Florida’s Public Records Law. Section 119.011(2), Florida Statutes.

14. It is also hornbook law that Florida has a strong tradition of open records and there is a strong presumption in favor of the openness of governmental records in this State. Art. I, § 24, Fla. Const.; Section 119.01(1), Fla. Stat.; *Microdecisions, Inc. v. Skinner*, 889 So.2d 871, 875 (Fla. 2d DCA 2004); *Salvador v. Fennelly*, 593 So.2d 1091, 1094 (Fla. 4th DCA 1992). Accordingly, the Public Records Law is to be construed liberally in favor of openness and disclosure. *City of St. Petersburg v. Romine ex rel. Dillinger*, 719 So.2d 19, 21 (Fla. 2d DCA 1998).

15. Conversely, exemptions from the Public Records Law are to be narrowly construed, and the party claiming an exemption from disclosure has the burden to prove entitlement to any exemption. *WFTV, Inc. v. School Bd. Of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004); *Weeks v. Golden*, 764 So.2d 633 (Fla. 1st DCA 2000); *City of St. Petersburg*, 719

So.2d at 21. The reason that any person seeks to obtain access to public record is irrelevant. *City of St. Petersburg*, 719 So.2d at 21. *See also, Warden v. Bennett*, 340 So.2d 977, 978 (Fla. 2d DCA 1976) (“Public Records Act does not direct itself to the motivation of the person who seeks the records”). Absent some statutory exemption, the right of access to public records is “virtually unfettered.” *Lorei v. Smith*, 464 So.2d 1330, 1332 (Fla. 2d DCA 1985), *pet. for rev. den.*, 475 So.2d 695 (Fla. 1985). *See also, Tribune Company v. Public Records*, 493 So.2d 480 (Fla.2d DCA 1986), *pet. for rev. den.*, 503 So.2d 327 (Fla. 1987); *Warden v. Bennett*, 340 So.2d 977 (Fla. 2d DCA 1976).

16. The only basis Holmes could have for asserting that the information in Tables 15, 16 and 17 is not a public record is a claim that it is a trade secret. Section 815.045, Florida Statutes, exempts from the Public Records Law “trade secret” information as that term is defined in Section 812.081, Florida Statutes. As the statutory definition makes clear, in order to be a trade secret, information must be (1) secret; (2) of value; (3) for use or in use by the business; (4) of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it; and (5) the owner must have taken measures to prevent it becoming available to persons other than those selected by the owner to have access for limited purposes. § 812.081(1)(c), Fla. Stat.

17. There is no basis for asserting that any of the information reflected in the tables in question is a trade secret. It is aggregate data and does not reveal any information on any individual managed care contract. Holmes can point to no contractual or other reason for this information being exempt from disclosure under Florida’s Public Records Law other than its own designation of the same as allegedly “confidential.”

18. However, documents that are otherwise public records cannot be made exempt from disclosure merely by designation of the same as “confidential” by the party furnishing the records to a government agency. *Seapro Corp. v. Fla. Dept. of Environmental Protection*, 839 So.2d 781, 784 (Fla. 1st DCA 2003) (citing *Shevin v. Byron, Harless, Schaffer, Reid and Assocs., Inc.*, 379 So.2d 633, 635 (Fla. 1980)). Neither the wishes nor the expectations of the party furnishing records to an agency that the records remain confidential is determinative. *Id.*

19. If otherwise public records could be made exempt from disclosure by simply labeling them as “confidential,” the Public Records Law would be subject to manipulation and abuse at the whim of any private party filing or otherwise providing documents to a state, local, or other governmental agency.

20. There is other specific information by managed care payors contained in other sections of Wuesthoff Ex. 94A. Information from specific managed care contracts was exchanged by the parties and would include information that Wuesthoff acknowledges to be confidential trade secret information. However, this company-by-company data is not addressed in this Motion and Wuesthoff does not seek its disclosure.

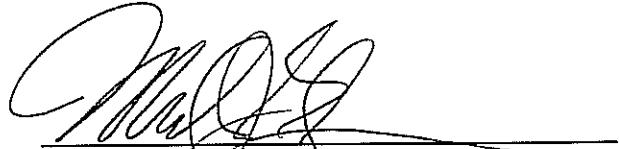
21. This Motion only relates to records for which there is no basis for confidentiality other than the self-imposed designation by Holmes.

22. As noted above, counsel for Holmes has been consulted regarding this Motion and does oppose it. Counsel for the Agency for Health Care Administration has also been consulted and takes no position on this Motion.

23. Wuesthoff requests oral argument on this Motion.

WHEREFORE, Wuesthoff respectfully requests that an Order be entered determining that Wuesthoff Exhibit 94A, Tables 15, 16 and 17 are not confidential and are public records in this proceeding.

DATED this 26th day of October, 2006.



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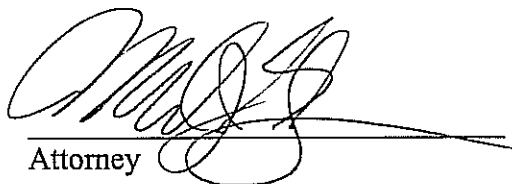
Attorneys for Wuesthoff Memorial Hospital,
Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of October, 2006, the foregoing has been provided by hand delivery to Administrative Law Judge Robert S. Cohen, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and copies have been furnished to the following by hand delivery:

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Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

WUESTHOFF HEALTH SYSTEM, INC.

Plaintiff,

v.

Case No. 6:05-cv-1454-Orl-22JGG

HEALTH FIRST, INC., HOLMES REGIONAL
MEDICAL CENTER, INC., CAPE
CANAVERAL HOSPITAL, INC., HEALTH
FIRST PHYSICIANS INC., AND
HEALTH FIRST HEALTH PLANS, INC.

Defendants.

**STIPULATION AGAINST UNAUTHORIZED USE OR DISCLOSURE OF
CONFIDENTIAL INFORMATION AND AS TO USE OF
MATERIALS FROM PRIOR PROCEEDINGS**

Plaintiff, WUESTHOFF HEALTH SYSTEMS, INC. and Defendants, HEALTH FIRST, INC., HOLMES REGIONAL MEDICAL CENTER, INC., CAPE CANAVERAL HOSPITAL, INC., HEALTH FIRST PHYSICIANS, INC. and HEALTH FIRST HEALTH PLANS, INC., by and through their undersigned counsel, hereby stipulate and agree, as of this 7th day of February, 2006, as follows:

1. Counsel for any party and/or a non-party or witness producing or furnishing information or documents of any nature in response to subpoenas, requests for production, requests for admissions, in answers to interrogatories or at a deposition in connection with the litigation matters described herein may designate as "Confidential," in accordance with the procedures set forth herein, any admission, interrogatory answer or document, or part thereof, or any deposition testimony that such counsel believes in good faith to contain or reflect

"Confidential Information" as defined below. Any such designation shall be made at the time the information is produced or furnished or at a later time as provided in paragraph 8(c) hereof. Any party may object to any such designation pursuant to the procedures in paragraph 13 hereof. For purposes of this Stipulation the term "document" shall include any written, typed or printed matter of any kind, computer print-outs, sound recordings, electronic data, photographs or any other media for preparing, duplicating or recording information.

2. The term "Confidential Information" as used herein shall refer to that information the disclosure of which might be injurious to a party's business interests and, without limitation, may include trade secrets; customer lists; personal information; non-public financial information; research information; marketing, strategic or other future planning information; or other commercially sensitive information. Confidential Information also shall include protected health information ("PHI") that is regulated by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations promulgated by the Secretary of the Department of Health and Human Services to enforce HIPAA, along with other federal regulations, including but not limited to 42 CFR Part 2.

3. PHI includes individually identifiable health information which is defined by the HIPAA regulations as information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual." (45 C.F.R. § 164.501). Individually identifiable health information includes patient names, addresses, and social security numbers.

4. Confidential Information shall be designated either as "Confidential" or "Highly-Confidential Material" pursuant to the procedures described in this Stipulation. Notwithstanding any provision in this Stipulation seemingly to the contrary, no party concedes that any information designated by any other person or party as Confidential or "Highly Confidential Material" does in fact contain or reflect Confidential Information. Furthermore, the failure of a party to contest any person's or other party's designation of information as Confidential Information under this Stipulation shall not operate as a concession or an admission that the information does in fact contain or reflect or otherwise constitute Confidential Information, however, such information designated as "Confidential" or "Highly-Confidential Material" shall be treated as confidential for purposes of this litigation and this Stipulation.

5. Confidential Information shall be used only for the purposes of the above-captioned action (including any appeals) and the CON proceedings (as defined below and including any appeals) and not for any business or other purposes whatsoever. Confidential Information shall not be given, shown, made available, disclosed or communicated in any way except as specifically authorized herein. No copies of any designated "Confidential" or "Highly Confidential Material" shall be made except to the extent reasonably necessary for purposes of these litigation matters and all copies and extracts shall be marked "Confidential" or "Highly Confidential Material" consistently with the original and shall be subject to all the restrictions pertaining to the originals.

6. This Stipulation applies to any document, testimony or other information which has come or does come into the possession of any party in the course of discovery in (a) this case; (b) the proceedings before the State of Florida, Agency for Health Care Administration or the State of Florida, Division of Administrative Hearings (Cases Nos. 05-2738CON and 2854CON)

related to the applications for a certificate of need filed by Health First identified as CON No. 9836 or CON No. 9759; (c) any proceedings before the State of Florida, Agency for Health Care Administration, and the State of Florida, Division of Administrative Hearings, as may arise in connection with the application for a certificate of need filed by Health First identified as CON No. 9881. This Stipulation does not apply to information that becomes generally available to the public through voluntary disclosure by the party whose information is disclosed. Nothing in this Stipulation shall restrict the use or disclosure by a party of its own Confidential Information or of Confidential Information that has been designated as such only by that party.

7. Except for those persons described in paragraph 9(a) & (d) herein, all persons to whom Confidential Information is disclosed or by whom Confidential Information is used, including without limitation witnesses at depositions or otherwise, experts, and nonparties and their representatives, shall agree, in writing in the form attached hereto as Exhibit A, to be bound by the terms of this Stipulation and to take all necessary precautions to prevent any disclosure or use of confidential information other than as authorized by this Stipulation. Prior to disclosure of Confidential Information to any person authorized hereunder to receive it, counsel or such other person making such disclosure shall obtain from the person to whom disclosure is to be made (except personnel as defined in paragraph 9(a) & (d)) such written acknowledgement in the form of Exhibit "A". Such signed acknowledgement shall be retained by counsel of record making the disclosure.

8. Information shall be designated as "Confidential" as follows:

a. In the case of documents, designation shall be made by placing the legend "Confidential Wuesthoff/Health First" on each page of any document deemed to contain such Confidential Information;

b. In the case of answers to interrogatories or admissions, designation shall be made by placing the legend "Confidential" on any page(s) of any answer or admission deemed to contain such Confidential Information, indicating any portion of such page which does not contain such Confidential Information, if any. Alternatively, answers deemed to contain Confidential Information may be bound separately and marked with the appropriate legend;

c. In the case of depositions, designation of any portion of any transcript (including exhibits) deemed to contain Confidential Information shall be made by placing on the record during the course of the deposition the appropriate designation or by notifying the parties in writing within ten (10) days (or such other period as the parties may agree) after the receipt of a written transcript, specifying the pages on which such confidential information is contained. At the request, to be confirmed in writing or on the record of such deposition, of any person or party who in good faith believes a deposition transcript may contain Confidential Information, pending such designation the entire transcript of any depositions so identified shall be treated as Confidential Information until the end of the aforementioned ten day period and not disclosed other than as provided in this Stipulation. Notwithstanding the foregoing, in the CON Proceedings (as defined in paragraph 30 below) the parties recognize that the majority of depositions will not contain Confidential Information and will work together to identify which depositions shall be subject to this requirement. In the case of designations placed on the record during the course of the deposition, the court reporter shall place the appropriate legend on every page of the transcript containing such Confidential Information; and

d. Any filing or submission (or part thereof) in this Case or the CON Proceedings, as defined in paragraph 30 below that includes, discloses, summarizes, excerpts or reflects Confidential Information shall be made under seal and the party making such filing or

submission shall request that the filing be maintained under seal until further order of the Court or the Administrative Law Judge, as appropriate. Counsel filing or submitting Confidential Information shall include next to the caption of such a filing or submission the words "TO BE FILED UNDER SEAL."

9. Information designated as "Confidential" may not be disclosed to any person other than:

a. counsel to the parties, including paralegal, clerical and other such personnel working under the supervision of the foregoing counsel;

b. retained independent experts whose expertise and training is required by the attorneys for the named parties to assist in this litigation and those employees of such retained independent experts;

c. subject to paragraph 9(g), deponents, trial witnesses and any other person whom a party in good faith determines may be a potential witness at deposition or trial, but only to the extent reasonably necessary for that deponent's or witness's testimony and not to be retained by such deponent or witness;

d. the court and court personnel, including, without limitation, court reporters, stenographic reporters and jurors, or alternates;

e. any representative of any insurer for purposes of making decisions regarding coverage or settlement of claims; and

f. any other person or entity as to whom counsel for the producer or provider of the Confidential Information agrees in writing or whom the Court directs shall have access to such information.

g. Five (5) business days prior to disclosure of Confidential Information to any person identified in paragraph 9(c) above, counsel for the party proposing such disclosure shall provide written notice of the intended disclosure to the person or party which produced such information. The notice shall identify the Confidential Information to be disclosed and the name of the person to whom disclosure is proposed and will include a copy of Exhibit A hereto executed by the person to whom disclosure is proposed. If within such five-day period no objection in writing to such disclosure is made, then the Confidential Information may be disclosed to such person. If a timely objection is raised, the parties shall seek to resolve the issue informally, failing which, the party seeking to make such disclosure may apply to the Court (or to an Administrative Law Judge if the dispute arises in a "CON Proceeding" as defined in paragraph 30 below) for an Order permitting the disclosure to be made.

10. In the event any party to this action or person subpoenaed to provide information is requested to produce or disclose Confidential Information that the person or party reasonably believes to be ultra-confidential, ultra-sensitive or ultra-valuable business, trade secret or other proprietary information, which, in the reasonable and good faith belief of such person or party, is not adequately protected by the existing provisions of this Stipulation, such person or party shall, as soon as practicable after the request for such information, designate the requested information as "Highly-Confidential Material." Upon the designation of information as "Highly-Confidential Material," the parties and/or persons shall attempt to stipulate in writing to a mutually satisfactory means for producing, disclosing or disposing of such information while preserving and protecting the value, sensitivity or utility of the Highly-Confidential Material. Satisfactory options for producing, disclosing or disposing of Highly-Confidential Material may include, without limitation: (1) limiting the production or disclosure of Highly-Confidential Material

strictly to counsel or experts and not to any party; (2) forbidding any person (whether counsel, expert or otherwise) to copy, reproduce, recreate, excerpt or summarize Highly-Confidential Material; (3) requiring any production or inspection of Highly-Confidential Material to be conducted at a neutral location where the production or inspection may be monitored or controlled; (4) some combination of these or other terms; or (5) any other restriction(s) satisfactory to the parties. Any stipulated means for producing or disclosing Highly-Confidential Material shall control over any other terms or provisions of this Stipulation. In the event the parties cannot agree on the scope of protections afforded Highly-Confidential Material, the party so designating the material may apply to the Court (or to an Administrative Law Judge if the dispute arises in a "CON Proceeding" as defined in paragraph 30 below) for entry of an Order prescribing the extent of protection.

11. Counsel shall in good faith attempt to resolve any disputes concerning the designation of any information as "Confidential" or "Highly Confidential Material." If counsel are not able to resolve any such disputes, any party may seek judicial resolution of the dispute or disputes under paragraph 13 hereof.

12. Prior to the disclosure of Confidential Information, including any Highly Confidential Material, at trial in this Case or in the hearing in the Proceedings (all as defined below), the parties shall negotiate in good faith to establish procedures for the use of such Confidential Information and/or Highly Confidential Material. If counsel are not able to resolve any such disputes, any party may seek judicial resolution of the dispute or disputes.

13. At any time any party may object to any designation of information as "Confidential" or "Highly-Confidential Material" on the grounds it in fact does not contain or reflect Confidential Information or has been improperly designated. A failure to object at the time the

information is so designated shall not preclude a subsequent challenge thereof. The following procedures shall apply to such objections:

- a. A party objecting to the designation of information as "Confidential" or "Highly-Confidential Material" must so notify counsel for the producing party;
- b. Within ten (10) business days of receipt of such notice of objection, counsel for the party seeking confidential treatment shall respond in writing to any such notification by either: (i) withdrawing such designation; or (ii) stating that it refuses to do so and the reasons for its refusal;
- c. If no response to the notice of objection is received by the objecting party within ten (10) business days of receipt of such notice, the protection of this Stipulation shall be deemed removed, subject to the designating party seeking relief from such action for good cause; and
- d. If the objection cannot expeditiously and informally be resolved, the party challenging the designation of such information as "Confidential" or "Highly-Confidential Material" may within ten (10) days after receipt of the written refusal under subparagraph 13(b), and upon reasonable notice, apply for an appropriate ruling from the Court (or an Administrative Law Judge) determining whether the document or other information is appropriate for confidential treatment. The designated information at issue shall continue to be treated as Confidential Information as designated until the Court (or an Administrative Law Judge) orders otherwise.

14. The inadvertent production of any document or other information during discovery in this action shall be without prejudice to any claim that such information is confidential, privileged, or otherwise protected from discovery and no producing party shall be held to have

waived any rights by such inadvertent production; provided, however, that this Stipulation shall not prevent any party from moving to compel production of allegedly privileged information on any grounds other than the inadvertent production of such information.

15. Prior to a party producing any Confidential Information of another party in response to a lawful subpoena or other compulsory process issued on behalf of a third party, the party to whom such subpoena or process is directed shall provide notice to all other parties of the intent to disclose Confidential Information in response to the subpoena or other compulsory process at least fourteen (14) business days prior to the return date of the subpoena or other compulsory process and shall cooperate with the party whose documents or information is sought in its reasonable efforts to prevent disclosure or obtain other relief. If the subpoena or other compulsory process has a return date of less than fourteen (14) days, notice shall be given to other parties in writing or by telephone as soon as possible, but in no event later than forty-eight (48) hours prior to the return date.

16. This Stipulation has no effect upon, and its scope shall not extend to, any producing party's use of its own "Confidential" or "Highly-Confidential Material."

17. In the event additional persons become parties to the action, their counsel and/or experts or consultants retained to assist counsel shall not have access to "Confidential Information" produced by or obtained from any other party to the action until those parties and their counsel have executed this Stipulation.

18. In the event that non-parties produce documents or information in connection with this action, the parties agree that production of such documents or information may at the request of any producing non-party be made subject to the provisions of this Stipulation and that the non-parties producing such documents or information shall be treated as producing parties within the

terms of this Stipulation and will have the same protections and obligations as a producing party under this Stipulation.

19. Immediately, or as soon thereafter as practicable, and in any event no later than thirty (30) business days following the termination of this action, or the termination of the CON Proceedings, whichever is later, all "Confidential" or "Highly-Confidential Material" and all documents containing or reflecting "Confidential" or "Highly-Confidential Material," including, without limitation, copies and summaries shall be returned to the producing party. Upon agreement of the producing party, alternatively, such "Confidential" or "Highly-Confidential Material" shall be certified by counsel for the party or parties as having been destroyed, except that counsel may retain copies of court filings and official transcripts and exhibits filed with the court (in the Case or CON Proceedings, as defined below) provided those retained documents and the "Confidential Information" or "Highly-Confidential Material" contained therein will continue to be treated as provided herein. This paragraph shall not require any party to provide privileged or work product documents to another party; such documents shall, however, be certified as destroyed within the timeframe set forth in this provision.

20. Any party needing further protection with respect to discovery may, if agreement cannot be reached among the parties, seek appropriate relief from the Court or the Administrative Law Judge as appropriate upon at least five (5) business days' notice to all other parties.

21. In the event of a violation or threatened violation of any of the terms of this Stipulation, the parties agree that the aggrieved party may immediately apply to the Court or the Administrative Law Judge as appropriate to obtain injunctive or other appropriate relief against any such violation or threatened violation of this Stipulation and in the event of such application,

the party against whom the injunctive or other appropriate relief is sought shall not, subject to the terms of this Stipulation, employ as a defense thereto the claim that the aggrieved party possesses an adequate remedy at law. The parties hereto and any other person subject to this Stipulation agree that the Court or the Administrative Law Judge shall exercise jurisdiction over it or them for the purposes of enforcing the terms thereof, and may impose appropriate sanctions for violations. The parties further stipulate and agree that, at the discretion of the Court, a violation of this Stipulation may be punishable as if contempt by an Order of the Court.

22. This Stipulation shall be effective immediately and shall survive the conclusion of this litigation.

23. The purpose of this Stipulation is to expedite the production of documents without need for resort to a court proceeding; however, the provisions hereof shall not limit or be deemed to waive the right of any party to seek relief from, or greater protection than, any of the provisions herein.

24. Nothing in this Stipulation shall be construed as requiring the production of privileged or otherwise protected documents or information.

25. Unless otherwise authorized by the Court, the Administrative Law Judge or the producing party or non-party, no person shall contact patients using such Confidential Information obtained from a producing party or non-party.

26. Any party or non-party producing "Confidential Information" may apply to the Court or the Administrative Law Judge at any time, upon proper notice, for a modification of this Stipulation with respect to the handling of any document or other materials.

27. All third parties, other than counsel for either party, retained by a party and to whom Confidential Information has been disclosed shall be prohibited from negotiating, or assisting in

the negotiation of, or representing in any capacity, a party involved in the negotiation by any hospital in Brevard County with any third party payor during a period of two (2) years, from termination of this litigation.

28. Pursuant to 45 C.F.R. §§ 164.512(e)(1)(ii)(B) and 164.512(e)(1)(iv) this agreement is a qualified protective order that is intended to meet the requirements of § 164.512(e)(1)(v).

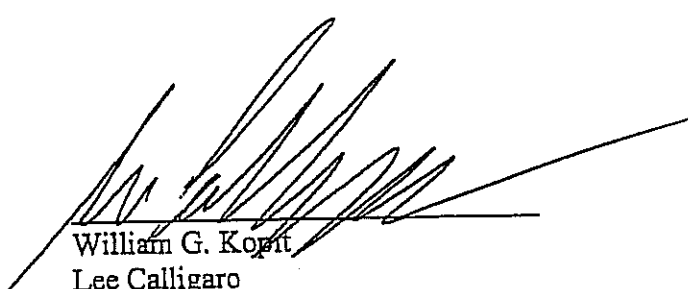
29. With regard to all documents containing PHI, as defined in 45 C.F.R. § 164.501, any person who receives documents containing PHI: (a) is prohibited from using or disclosing any PHI for any purpose other than this litigation before the applicable forum; (b) shall redact any PHI from any document(s) that will be used as a deposition or trial exhibit, or otherwise disclosed to persons other than counsel for the parties or consultants, or experts retained by counsel or the parties for purposes of this litigation; and (c) shall either return the documents containing PHI to the party or third party who produced such PHI or shall destroy the documents at the end of this litigation.

30. The parties hereby stipulate and agree that all documents or materials produced or provided: (a) in this case (Civ. Action No. 6:05-cv-1454-Orl-22JGG (the "Case")); or (b) in the proceedings before the State of Florida, Agency for Health Care Administration and the State of Florida, Division of Administrative Hearings (Cases Nos. 05-2738CON and 2854CON) related to the applications for a certificate of need filed by Health First identified as CON No. 9836 or CON No. 9759, or any proceedings as may arise before the State of Florida, Agency for Health Care Administration and the State of Florida, Division of Administrative Hearings, related to CON No. 9881 (collectively the "CON Proceedings"), shall be deemed to have been produced in both this Case and in the CON Proceedings and may be used, consistent with the provisions of this Stipulation, in both.

31. This Stipulation shall be deemed as entered into both in this Case and in the CON Proceedings and shall be filed both with the State of Florida Division of Administrative Hearings and with the United States District Court for the Middle District of Florida, and with a Joint Motion that it be entered as an Order in the CON Proceedings.

Attorneys in Civil Action 6:05-cv-1454-Orl-22JGG:

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WUESTHOFF HEALTH SYSTEM, INC.



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INC:

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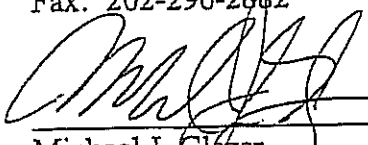
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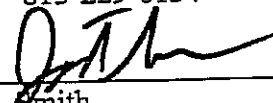
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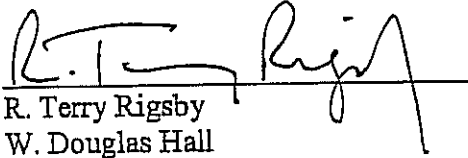


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Division of Administrative Hearings
Case No. 04-2810CON and CON application No.9836
Division of Administrative Hearings
Case No. 05-2738CON
And CON application No. 9881
Division of Administrative Hearings
Case No. (not yet assigned)

For Petitioner
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Rockledge and Wuesthoff Memorial
Hospital, Inc.
d/b/a Wuesthoff Medical Center-
Melbourne

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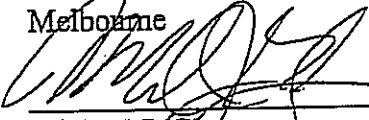
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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

WUESTHOFF HEALTH SYSTEM, INC.

Plaintiff,

v.

Case No. 6:05-cv-1454-Orl-22JGG

HEALTH FIRST, INC., HOLMES REGIONAL
MEDICAL CENTER, INC., CAPE
CANAVERAL HOSPITAL, INC., HEALTH
FIRST PHYSICIANS INC., AND
HEALTH FIRST HEALTH PLANS, INC.

Defendants.

DECLARATION OF _____
UNDER STIPULATION AGAINST UNAUTHORIZED
USE OF DISCLOSURE OF CONFIDENTIAL INFORMATION

I, _____, declares as follows:

1. My address is _____

2. My present employer is _____

3. My present occupation or job description is _____

4. I hereby acknowledge that I may receive information designated as CONFIDENTIAL in the above lawsuit and I certify my understanding that the use of such information is restricted by the STIPULATION AGAINST UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION AND AS TO USE OF MATERIALS FROM PRIOR PROCEEDINGS dated _____ (the STIPULATION).

5. I further state that I have been given a copy of and have read the STIPULATION, that I am familiar with the terms of the STIPULATION, that I agree to comply with and to be

bound by each of the terms thereof and that I agree to hold in confidence any information disclosed to me pursuant to the terms of the STIPULATION.

6. To assure my compliance with the STIPULATION, I hereby submit myself to the jurisdiction of the United States District Court, Middle District of Florida, Orlando Division, and to the State of Florida Division of Administrative Hearings for the limited purpose of any proceedings relating to the performance under, compliance with or violation of this STIPULATION.

7. I understand that I am to retain all of the materials that I receive which have been designated as CONFIDENTIAL in a container, cabinet, drawer, room or other safe place in a manner consistent with this STIPULATION; that all such materials are to remain in my custody until I have completed my assigned duties, whereupon they are to be returned to the party who provided them to me; and that any materials, memoranda, work notes or other documents derived from documents designated as CONFIDENTIAL or containing any information contained therein are to be delivered to the party who provided the designated materials. Such delivery shall not relieve me from any of the continuing obligations imposed upon me by the STIPULATION. I further agree to notify any stenographic or clerical personnel who are required to assist me of the terms of the STIPULATION.

I declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

Date: _____

[Signature]

[Printed Name]

4/24/2006 aaschwah 100092 10012004 09302005 1					REPORTING PERIOD FROM: 10/1/2004 TO: 9/30/2005		AHCA No. 10-0092		ACTUAL X			WORKSHEET C-3a (rev.) ACTUAL		
STATEMENT OF PATIENT CARE REVENUES AND DEDUCTIONS FROM REVENUE BY PAYOR OR CLASS FOR INPATIENT AND OUTPATIENT SERVICES			REVENUE BY PAYOR CLASSIFICATION		ACCT. NUMB.	TOTAL INPATIENT REVENUE	TOTAL OUTPATIENT REVENUE	TOTAL PATIENT REVENUE	TOTAL INPATIENT DEDUCTIONS FROM REVENUE	TOTAL OUTPATIENT DEDUCTIONS FROM REVENUE	TOTAL DEDUCTIONS FROM REVENUE	NET INPATIENT REVENUE	NET OUTPATIENT REVENUE	TOTAL NET PATIENT REVENUE
LN NO						(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
01	Bad Debts		5900					33,561,578	10,654,506	6,026,557	16,681,063		(6,026,557)	(16,681,063)
02	Self-Pay Patients		5905			16,808,729	16,752,850						16,752,850	33,561,578
03	Charity Care-Hill Burton		5950						0	0	0		0	0
04	Charity Care-Other		5960						12,821,147	1,625,281	14,446,428	(12,821,147)	(1,625,281)	(14,446,428)
05	Conventional-Medicare		5910			171,841,255	60,753,948	232,595,203	124,655,067	46,017,134	170,672,201	47,186,188	14,736,814	61,923,002
06	Conventional-Medicaid		5920			17,582,180	8,861,923	26,444,103	12,744,031	6,677,560	19,421,591	4,838,149	2,184,363	7,022,512
07	Other Government Fixed-Price Payors		5930			11,417,091	6,583,412	18,000,503	8,872,997	3,983,714	12,856,711	2,544,094	2,599,698	5,143,792
08	Insurance Charge-Based		5935			3,363,841	4,201,424	7,565,265				3,363,841	4,201,424	7,565,265
09	Other Charge Based Payors		5936			0	0	0					0	0
10	Medicare-HMO		5911			3,198,560	598,160	3,796,720	2,488,719	384,221	2,872,940	729,841	213,938	943,780
11	Medicaid-HMO		5921			7,882,208	5,834,031	13,716,239	5,668,199	4,385,389	10,053,588	2,214,009	1,448,642	3,662,651
12	Commercial-HMO		5940			0	0	0	0	0	0	0	0	0
13	Commercial-PPO		5941			52,050,911	48,672,606	100,723,517	33,147,856	30,312,334	63,460,190	18,903,055	18,360,272	37,263,327
14	Other Commercial Discounted Payors		5945			17,332,367	17,039,337	34,371,704	12,482,506	12,420,996	24,913,502	4,839,861	4,618,341	9,458,202
15	Admin. Courtesy and Policy Discounts		5980						1,463,920	985,705	2,449,625	(1,463,920)	(985,705)	(2,449,625)
16	Employee Discounts		5981						2,746,105	4,855,995	7,602,100	(2,746,105)	(4,855,995)	(7,602,100)
17	Other Deductions from Revenue		5990						365,662	594,894	960,556	(365,662)	(594,894)	(960,556)
18	Restricted Funds for Indigent Care		5995			0	0	0	0	0	0	0	0	0
19	Total Revenue and Deductions		C003			301,477,142	169,297,691	470,774,833	228,100,715	118,265,780	346,370,495	73,376,427	51,027,911	124,404,338
20	Radiation Therapy Revenue		4900			0	134,837	134,837	0	101,002	101,002	0	33,835	33,835
21	Adjusted Revenue And Deductions		C035			301,477,142	169,162,854	470,639,996	228,100,715	118,166,778	346,269,493	73,376,427	50,984,076	124,370,503
22	Total HMO/PPO Payment		C004					26,678,787						0

NOTE: THE AMOUNT ON LINE 19, COLUMN 3 SHOULD EQUAL ACCOUNT C370(3).

THE REVENUE AMOUNTS FOR ACCOUNT 4900 SHOULD EQUAL ACCOUNT 4360(1),(2),(3) ON WORKSHEET C-3

ON WORKSHEET C-3

NOTES: ACCOUNT 5995 IS "RESTRICTED GRANTS AND DONATIONS FOR INDIGENT CARE" WHICH FORMERLY APPEARED ON WORKSHEET C-

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