

ORIGINAL



**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)
)
ProMedica Health Systems, Inc.,)
)
Respondent.)

Docket No. 9346

[PUBLIC RECORD – EXPURGATED VERSION]

**Unopposed Motion of Third Party Fulton County Health Center
for *In Camera* Treatment of Exhibits and Underlying Data**

I. *Introduction*

Pursuant to 16 C.F.R. §3.45(b), the Protective Order entered in this case on January 6, 2011 (the "Protective Order"), and the Scheduling Order entered in this case on February 7, 2011, Fulton County Health Center ("FCHC"), a third party to these administrative proceedings and a producing party under the terms of the Protective Order, respectfully moves for *in camera* treatment of the proposed exhibits of the Federal Trade Commission ("the FTC") and the underlying data that Complaint Counsel has designated for possible introduction at the hearing in this matter which have been identified as FTC Exhibit Nos. PX01815 and PX02219. Those two Exhibits contain confidential and strategic planning information, all of which were marked as confidential when produced under process by FCHC. As explained fully below, public disclosure of such information likely will result in a clearly defined serious injury to FCHC. Accordingly, FCHC requests that the two Exhibits and the information identified therein be held

in camera for a period of not less than three (3) years. Neither Complaint Counsel nor Respondent's counsel objects to FCHC's motion.

II. *Relevant Facts*

(A) General Background

FCHC is not a party to this proceeding. Under the terms of the Protective Order, it is a producing party. By letter dated April 28, 2011 addressed to Gary O. Sommer, legal counsel for FCHC, Complaint Counsel notified FCHC of its intent to offer into evidence in these administrative proceedings the "data, document, and testimony" identified in "Attachment A" to the letter ("the FTC's Attachment A"). [Sommer Aff. ¶4, Attachment 1 thereto]. By letter dated May 4, 2011, Complaint Counsel clarified the data which it intended to offer into evidence. [*Id.* at ¶5, Attachment 2 thereto].

The documents which were identified on the FTC's Attachment A are as follows: (i) Exhibit No. PX01815 described as "Fulton County Health Center Data"; (ii) Exhibit No. PX02057 described as "Signed Declaration of E. Dean Beck (FCHC)"; and (iii) Exhibit No. PX02219 identified as FTC-FCHC – 00000284 and described as "Fulton County Health Center Annual Marketing and Planning Report Analyzing 2008". [*Id.*, Attachment 1 thereto and Attachment A to FTC letter]. The FTC's May 4, 2011 letter clarified the "data" the FTC intends to use as Exhibit No. PX01815 as those documents provided to counsel identified as ftc-fchc – 00000264, 00000265, 00000266, 00000267, and 00000268.xlsx which contain the following information: patient residence zip code; patient age and gender; date of inpatient admission and discharge; medical diagnosis, procedure and reimbursement codes; and specific source of payment and type of health plan for individual patients for the period from January 1, 2006 through February 28, 2011 (collectively hereafter "the Data Sets"). [*Id.* at ¶6].

It is from the above referenced communications that FCHC now seeks *in camera* protection of two of the three documents identified by the FTC, Exhibit No. PX01815 (described as “Fulton County Health Center Data”); and Exhibit No. PX02219 (described as “Fulton County Health Center Annual Marketing and Planning Report Analyzing 2008”).¹ True and accurate copies of the documents for which FCHC seeks *in camera* protection are attached as Attachments 1 and 2 to the Affidavit of E. Dean Beck (“the Beck Affidavit”) on the “*In Camera*” copy of this motion being submitted simultaneously with the “Public” version hereof. The Affidavit of E. Dean Beck (with Attachments 1 and 2 redacted on the “Public” copy) is attached hereto as Exhibit B.

(B) Exhibit No. PX01815 - “Fulton County Health Center Data”

As clarified by the FTC’s letter of May 4, 2011, the FTC intends to offer one or more documents that set forth in summary form the Data Sets. As explained in the Beck Affidavit, that information is not available to the public and is not known in the compiled form as it appears on Exhibit No. PX01815 to anyone outside of FCHC’s business. [Beck Aff. ¶7, Attachment 1 to *In Camera* copy of this motion]. Additionally, the Data Sets in the compiled form provided to the FTC on Exhibit No. PX01815 is known only to five (5) members of senior management at FCHC. [*Id.* at ¶8]. The information on Exhibit No. PX01815 was compiled specifically in response to the separate Civil Investigation Demand and Subpoena *Duces Tecum* issued by the FTC and served upon FCHC, and the data from which it was generated is protected in FCHC’s computer and other systems and is only available to senior management at FCHC. [*Id.* at ¶9].

Moreover, the subject data is extremely valuable to FCHC’s business operations in that it provides historical information about what medical and other services FCHC is providing, payor

¹ For clarification purposes, FCHC is not seeking *in camera* protection of Exhibit No. PX02057 described as “Signed Declaration of E. Dean Beck (FCHC)” as it does not believe that it meets the criteria for such protection.

mix (i.e. third party payors versus self pay versus governmental assisted pay), the geographic area in which its patients reside, gender of patients, and ages of patients. [*Id.* at ¶10]. From that information FCHC is able to target market in the geographical and service areas from which it draws, as well as to identify and focus its efforts in areas where it may wish to improve. [*Id.* at ¶11]. It also provides information that is specifically utilized in negotiating with third party payors. [*Id.* at ¶12]. Given the nature of the information, if competitors were to be given access to the same information, they could easily target market in areas where FCHC has a significant presence, and could also utilize the information to attempt to flood markets where FCHC may be lacking. Simply put, competitors could use it to the serious detriment of FCHC by having an unfair competitive advantage in vying for market share in FCHC's service area. [*Id.* at ¶13]. The Data Set is essentially a snapshot of FCHC's entire business operation. [*Id.*]. It is not possible to separately identify and quantify the direct costs and efforts involved in developing, maintaining, and protecting the Data Sets because that information is generated with each separate patient encounter.² [*Id.* at ¶14]. Finally, as expressed above, since the Data Set in the form found on Exhibit No. PX01815 is not shared outside of FCHC, it could not be obtained or duplicated by anyone in the general public, or any of FCHC's competitors. [*Id.* at ¶16].

(C) Exhibit No. PX02219 - FCHC Annual Marketing and Planning Report Analyzing 2008

The FTC also intends to offer Exhibit No. PX02219 described as "Fulton County Health Center Annual Marketing and Planning Report Analyzing 2008." The information contained in that document can be generally broken down into four (4) categories: (i) patient demographics; (ii) market share data; and (iii) FCHC marketing review and planning; and (iv) internally identified "strengths, weaknesses, opportunities and threats". [*Id.* at ¶17, Attachment 2 to *In*

² The total operational expenses of FCHC for 2010 exceed [**REDACTED**]. Ultimately every dollar is spent by FCHC to create the patient encounters reflected on Exhibit PX01815. [*Id.* at ¶15].

Camera copy of this motion]. That information is not known outside of FCHC's business, is only known within FCHC's senior management, and it contains much of the documentation set forth in Exhibit No. PX01815 and is thus, generally protected. [*Id.* at ¶18]. Additionally, it is extremely valuable to FCHC in that it permits its management to review historical data, marketing trends, and to focus FCHC's resources where they are most productive. [*Id.* at ¶19]. It would thus be as equally valuable to any competitor trying to obtain more of the market in which FCHC competes. [*Id.*]. That is, competitors could easily take the information and focus its resources where FCHC is deficient, or where it is more lucrative to undercut FCHC in a given area. [*Id.* at ¶20]. As with the information in Exhibit No. PX01815, it is not possible to separately identify and quantify the direct costs and efforts involved in developing, maintaining, and protecting the information in Exhibit No. PX02219 because much of that information is generated with each separate patient encounter. [*Id.* at ¶21]. Since the information on Exhibit No. PX02219 is not known to individuals outside of FCHC, it could not be easily acquired or duplicated by someone in the general public, or FCHC's competitors. [*Id.* at ¶18].

III. *Applicable Legal Standard*

16 C.F.R. §3.45(b) states in pertinent part:

* * * A party or third party may obtain in camera treatment for material, or portions thereof, offered into evidence only by motion to the Administrative Law Judge. * * * The Administrative Law Judge shall order that such material whether admitted or rejected, be placed in camera only after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting in camera treatment or after finding that the material constitutes sensitive personal information. "Sensitive personal information" shall include, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable

by individual, such as an individual's medical records. For material other than sensitive personal information, a finding that public disclosure will likely result in a clearly defined, serious injury shall be based on the standard articulated in *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); see also *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977) * * *.

In *Bristol-Myers Co.*, *supra*, the FTC set forth the following factors to be considered in determining whether to grant in camera treatment:

“(1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. * * *”

Bristol-Myers Co., *supra*, at 456, citing Restatement of Torts § 757, Comment b at 6 (1939). The FTC has also indicated that the likely loss of business advantages is a valid example of a “clearly defined, serious injury” as set forth in the Rule. *General Foods Corp.*, 95 F.T.C. 352 (1980). Moreover, administrative law judges are given broad discretion in applying the above stated factors in determining what information should be accorded in camera treatment. See generally *In re General Foods Corp.*, *supra*. Also, the FTC has stated that a request for *in camera* consideration from a non-party, such as FCHC here, should be given “special solicitude.” See *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714 (1967); See also *Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984). It is important to keep in mind when undertaking the *in camera* analysis that “* * * if disclosure of confidential business information is likely to cause serious competitive injury, the principal countervailing consideration weighing in favor of disclosure should be the importance of the information in explaining the rationale of [the FTC's] decisions.” *General Foods Corp.*, *supra*.

IV. *Application of Law to Undisputed Facts*

The Data Sets and FCHC's Annual Marketing and Plan Report are confidential, proprietary and competitively-sensitive information that is material to FCHC's business operations, and public disclosure of such information to FCHC's competitors as well as to third-party payors would result in a direct, serious competitive injury to FCHC which injury reasonably may be inferred from the nature of the Data Sets and the Annual Marketing and Plan Report. *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184 (1961); *Kaiser Aluminum & Chemical Corporation*, 103 F.T.C. 500 (1984); *Rambus, Inc.*, Dkt. No. 9302, 2003 FTC LEXIS 68, at *2 Apr. 23, 2003) (McGuire). The Beck Affidavit and even a cursory review of the information set forth in the documents for which protection is sought clearly demonstrate that the factors set forth in *Bristol-Myers, supra*, are met here. The information is not known to the public or FCHC's competitors, it is only known to FCHC's senior management, it is protected as secret by FCHC, it is valuable to FCHC (and would be very valuable to its competitors), a substantial amount of money went into creating both documents, and it would be virtually impossible for a competitor to acquire or duplicate the information, particularly in the form as presented to the FTC. FCHC's information is "sufficiently secret and sufficiently material to [FCHC's] business [such] that disclosure would result in serious competitive injury", *General Foods Corp., supra*, at 355, and therefore, it falls squarely within the information to be protected under 16 C.F.R. §3.45(b).

Additionally, neither of the documents will be necessary to explain the rationale of the decision in this matter, whereas public disclosure of such information to FCHC's competitors is likely to cause serious competitive injury to FCHC by the very nature of the information, for

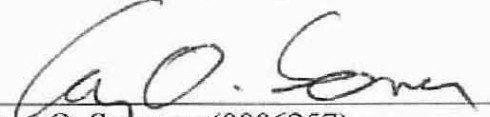
which reason this tribunal should provide *in camera* treatment to FCHS's data sets and Annual Marketing and Plan Report. *See, General Foods Corp.*, 95 F.T.C. 352, 355 (1980).

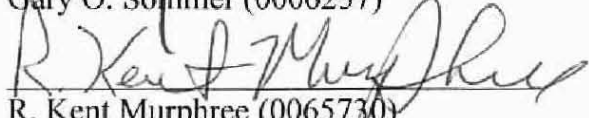
V. Conclusion

Exhibit Nos. Exhibit No. PX01815 and PX02219 satisfy the standard for *in camera* protection under the FTC's Rules of Practice and relevant FTC rulings. Accordingly, *in camera* protection should be extended to this information of FCHC identified hereinabove.

Dated: May 12, 2011

Respectfully submitted,



Gary O. Sommer (0006257)


R. Kent Murphree (0065730)
HEBAN, SOMMER & MURPHREE, LLC
200 Dixie Hwy.
Rossford, Ohio 43460
Telephone: (419) 662-3100
Facsimile: (419) 662-6533
Attorneys for Fulton County Health Center

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2011 the foregoing [Public Record-Expurgated Version] Unopposed Motion of Third Party Fulton County Health Center for *In Camera* Treatment of Exhibits and Underlying Data was filed electronically with the Office of the Secretary through the Federal Trade Commission E-Filing System. In addition, one paper original and one copy have been sent to:


Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW., H-135
Washington, D.C. 20580

I also certify that on May 12, 2011 one paper copy of the foregoing motion was served by ordinary U.S. Mail, first class postage fully pre-paid, and one electronic copy of the motion was served by electronic mail upon:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, H-106
Washington, D.C. 20580
oyalj@ftc.gov

David Marx, Jr.
McDermott Will & Emery LLP
Counsel for Respondent
227 W. Monroe Street
Suite 4400
Chicago, IL 60606
dmarx@mwe.com

Jeanne Liu
Attorney, Bureau of Competition
U.S. Federal Trade Commission
Complaint Counsel
601 New Jersey Ave, NW
Washington, D.C. 20001
jliu@ftc.gov



Gary O. Sommer
HEBAN, SOMMER & MURPHREE, LLC
200 Dixie Hwy.
Rossford, Ohio 43460
419.662.3100
sommer@hsm-law.net
Attorney for Third Party Fulton County
Health Center

COPY CERTIFICATION

I hereby certify that the electronic copy of the [Public Record-Expurgated Version] Unopposed Motion of Third Party Fulton County Health Center for *In Camera* Treatment of Exhibits and Underlying Data filed with the Office of the Secretary through the Federal Trade Commission E-Filing System is a true and correct copy of the paper original and that a paper copy with original signature is being filed with the Secretary on this date by ordinary U.S. Mail, first class postage fully pre-paid.

Dated: May 12, 2011



Gary O. Sommer
HEBAN, SOMMER & MURPHREE, LLC
200 Dixie Hwy.
Rossford, Ohio 43460
419.662.3100
sommer@hsm-law.net
Attorney for Non-Party Fulton County
Health Center

EXHIBIT A

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)
)
ProMedica Health Systems, Inc.,)
)
Respondent.)

Docket No. 9346

**AFFIDAVIT
OF
GARY O. SOMMER**

STATE OF OHIO)
) **SS:**
COUNTY OF WOOD)

I, Gary O. Sommer, being first duly sworn according to law, do hereby state, as follows:

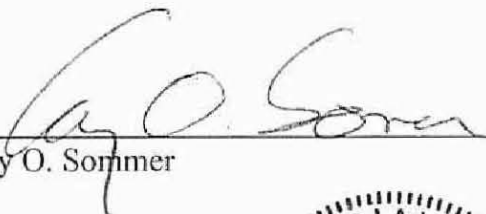
1. I am an adult of more than eighteen (18) years of age and competent to testify in this matter.
2. I am testifying from my own personal knowledge.
3. I am legal counsel for Fulton County Health Center ("FCHC") in the above captioned matter and have been acting in that capacity since FCHC was served by the Federal Trade Commission ("the FTC") with a Civil Investigatory Demand in August, 2010.
4. By letter dated April 28, 2011 addressed to me as legal counsel for FCHC, the FTC's counsel notified FCHC of the FTC's intent to offer into evidence in the above captioned administrative proceedings the "data, document, and testimony" identified in "Attachment A" to

the FTC's letter. A true and accurate copy of the referenced April 28, 2011 letter is attached hereto as Attachment 1.

5. By letter dated May 4, 2011, counsel for the FTC clarified the data which it intended to offer into evidence in the above captioned administrative proceedings. A true and accurate copy of the referenced May 4, 2011 letter is attached hereto as Attachment 2.

6. The FTC's May 4, 2011 letter clarified the "data" the FTC intends to use as Exhibit No. PX01815 as those documents provided to counsel identified as ftc-fche - 00000264, 00000265, 00000266, 00000267, and 00000268.xlsx which contain the following information: patient residence zip code; patient age and gender; date of inpatient admission and discharge; medical diagnosis, procedure and reimbursement codes; and specific source of payment and type of health plan for individual patients for the period from January 1, 2006 through February 28, 2011.

7. Affiant further sayeth naught.



Gary O. Sommer

Sworn before me on 12 day of May, 2011.



Notary Public



SANDRA K. WAGENER
Notary Public - State of Ohio
My Commission Expires September 8, 2014
Recorded in Wood County

**ATTACHMENT 1
TO
EXHIBIT A**



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV

April 28, 2011

VIA ELECTRONIC MAIL

Gary Sommer, Esq.
Heban, Sommer & Murphree, LLC
200 Dixie Highway
Rossford, OH 43460

RE: *In the Matter of ProMedica Health System, Inc.*, Federal Trade Commission
Docket No. 9346

Dear Gary:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intend to offer the data, document, and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, I am attaching a copy of the document and testimony. The administrative trial is scheduled to begin on May 31, 2011. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge D. Michael Chappell.

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45, 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment. For example, judges have granted *in camera* motions after a non-party to the proceeding demonstrated that public disclosure of commercially sensitive information would expose it to a serious competitive disadvantage; that it has taken and continues to take measures to guard the secrecy of the information; and that the documents are not widely disseminated.


Motions for *in camera* treatment for evidence to be introduced at trial must meet the standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov.

22, 2000); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). For your convenience, we have collected an example of a third-party motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed and granted in a recent FTC administrative proceeding; this is included as an attachment to this letter.

Please be aware that under the current Scheduling Order dated February 7, 2011, the deadline for filing motions seeking *in camera* status is **May 5, 2011**.

If you have any questions, please contact me at 202-326-3572 or at jliu@ftc.gov. Thank you.

Regards,



Jeanne Liu

Enclosures

Attachment A

In the Matter of PROMEDICA HEALTH SYSTEM, INC., Docket No. 9346
List of Fulton County Health Center Documents Marked As Exhibits by Complaint Counsel

Exhibit No.	Beg Bates	End Bates	Date	Description
PX01815	n/a	n/a	01/01/2004- 03/31/2011	Fulton County Health Center Data
PX02057	n/a	n/a	09/20/2010	Signed Declaration of E. Dean Beck (FCHC)
PX02219	FTC-FCHC-00000284	FTC-FCHC-00000284	08/27/2009	Fulton County Health Center Annual Marketing and Planning Report Analyzing 2008

**ATTACHMENT 2
TO
EXHIBIT A**



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV Division

May 4, 2011

VIA ELECTRONIC MAIL

Gary O. Sommer, Esq.
Heban, Sommer & Murphree, LLC
200 Dixie Highway
Rossford, OH 43460

RE: *In the Matter of ProMedica Health System, Inc.*, Federal Trade Commission Docket No. 9346

Dear Gary:

Further to Jeanne Liu's April 28, 2011 letter to you regarding the documents and data that Complaint Counsel intends to use at trial, and at your request to clarify the data referenced in Attachment A to that letter, I am sending you a CD that contains the Fulton County Health Center data that Complaint Counsel intends to use. Specifically, Complaint Counsel intends to use some or all of the FCHC data on the following files: ftc-fchc-00000264, 00000265, 00000266, 00000267, and 00000268.xlsx.

If you have any questions, please contact me at (202) 326-2579.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexis J. Gilman".

Alexis J. Gilman

EXHIBIT B

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)
)
)

ProMedica Health Systems, Inc.,)

Respondent.)
)
)

Docket No. 9346

**AFFIDAVIT
OF
E. DEAN BECK**

STATE OF OHIO)
) **SS:**
COUNTY OF FULTON)

I, E. Dean Beck, being first duly sworn according to law, do hereby state, as follows:

1. I am an adult of more than eighteen (18) years of age and competent to testify in this matter.

2. I am testifying from my own personal knowledge.

3. Since 1975 I have served as the Administrator of Fulton County Health Center ("FCHC").

4. As Administrator of FCHC my responsibilities include managing day-to-day activities of FCHC, supervising new service line additions and major expansions, overseeing contract negotiations with health plans, implementing new healthcare technology, and guiding FCHC's vision.

5. As Administrator of FCHC I am very familiar with the day-to-day business activities of FCHC, its annual budget information, all financial information, and the strategic vision of FCHC.

6. I have reviewed Exhibit Nos. PX01815 and PX02219 (“the Exhibits”) which the Federal Trade Commission (“the FTC”) has indicated it intends to offer as exhibits in connection with the above captioned case now pending before it. True and accurate copies of Exhibit Nos. PX01815 and PX02219 are attached as Attachments 1 and 2 to this Affidavit on the *In Camera* copy of the Motion, respectively.

7. The information contained in the Exhibits is not available to the public and is not known in the compiled form to anyone outside of FCHC’s business.

8. The data appearing on Exhibit No. PX0185 (“the Data Sets”) in the compiled form is known only to five (5) members of senior management at FCHC.

9. The information on Exhibit No. PX01815 was compiled specifically in response to the separate Civil Investigation Demand and Subpoena *Duces Tecum* issued by the FTC and served upon FCHC, and the data from which it was generated is protected in FCHC’s computer and other systems and is only available to senior management at FCHC.

10. The data appearing on Exhibit No. PX01815 is extremely valuable to FCHC’s business operations in that it provides historical information about what medical and other services FCHC is providing, payor mix (i.e. third party payors versus self pay versus governmental assisted pay), the geographic area in which its patients reside, gender of patients, and ages of patients.

11. From the data on Exhibit No. PX01815, FCHC is able to target market in the geographical and service areas from which it draws, as well as to identify and focus its efforts in areas where it may wish to improve.

12. Also the data on Exhibit No. PX01815 is specifically utilized in negotiating with third party payors.

13. Given the nature of the information on Exhibit No. PX01815, if competitors were given access to the same information, they could easily target market in areas where FCHC has a significant presence, and could also utilize the information to attempt to flood markets where FCHC may be lacking. That is, competitors could use it to the serious detriment of FCHC by having an unfair competitive advantage in vying for market share in FCHC's service area. The Data Set is essentially a snapshot of FCHC's entire business operation.

14. It is not possible to separately identify and quantify the direct costs and efforts involved in developing, maintaining, and protecting the Data Sets because that information is generated with each separate patient encounter.

15. The total operational expenses of FCHC for 2010 exceed [**REDACTED**] and ultimately every dollar is spent by FCHC to create the patient encounters reflected on Exhibit PX01815.

16. Since the Data Set in the form found on Exhibit No. PX01815 is not shared outside of FCHC, it could not be obtained or duplicated by anyone in the general public, or any of FCHC's competitors.

17. The information contained in Exhibit No. PX02219 can be generally broken down into four (4) categories: (i) patient demographics; (ii) market share data; and (iii) FCHC

marketing review and planning; and (iv) internally identified “strengths, weaknesses, opportunities and threats”.

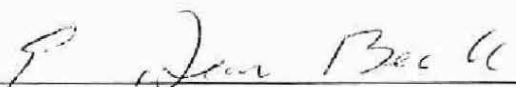
18. The information contained in Exhibit No. PX02219 is not known outside of FCHC’s business, is only known within FCHC’s senior management, and it contains much of the same information set forth in Exhibit No. PX01815 and is thus, generally protected.

19. The information contained in Exhibit No. PX02219 is extremely valuable to FCHC in that it permits its management to review historical data, marketing trends, and to focus FCHC’s resources where they are most productive. It would thus be as equally valuable to any competitor trying to obtain more of the market in which FCHC competes.

20. Competitors could easily take the information in Exhibit No. PX02219 and focus its resources where FCHC is deficient, or where it is more lucrative to undercut FCHC in a given area.

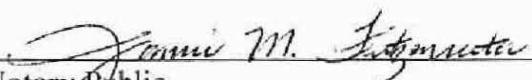
21. It is not possible to separately identify and quantify the direct costs and efforts involved in developing, maintaining, and protecting the information in Exhibit No. PX02219 because much of that information is generated with each separate patient encounter.

22. Affiant further sayeth naught.



E. Dean Beck, Administrator
Fulton County Health Center

Sworn before me on 11 day of May, 2011.



Notary Public
Jannie M. Finkenreiter
Notary Public, Henry Co. Ohio
My Commission Expires 07/02/2012

**ATTACHMENT 1
TO
EXHIBIT B**

FTC Exhibit No. PX01815

REDACTED

File No. ftc-fchc-00000264

REDACTED

File No. ftc-fchc-00000265

REDACTED

File No. ftc-fchc-00000266

REDACTED

File No. ftc-fchc-00000267

REDACTED

File No. ftc-fchc-00000268

REDACTED

**ATTACHMENT 2
TO
EXHIBIT B**

FTC Exhibit No. PX02219

REDACTED

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)
)
ProMedica Health Systems, Inc.,)
)
Respondent.)

Docket No. 9346

[PUBLIC]

**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION OF THIRD PARTY
FULTON COUNTY HEALTH CENTER FOR *IN CAMERA* TREATMENT OF
EXHIBITS AND UNDERLYING DATA**

Upon consideration of the *Unopposed Motion of Third Party Fulton County Health Center for In Camera Treatment of Exhibits and Underlying Data*, and the Court being fully informed, the Court hereby finds that public disclosure of the documents that are the subject of the Motion will likely result in a clearly defined, serious injury to Fulton County Health Center (“FCHC”). Therefore, the Court finds FCHC’s Motion well taken and hereby grants same.

IT IS THEREFORE ORDERED that pursuant to 16 C.F.R. §3.45(b) Federal Trade Commission (“the FTC”) Exhibit Nos. PX01815 and PX02219 which were produced to the FTC by Third Party Fulton County Health Center shall be placed *in camera* and protected from public disclosure for a period of three (3) years from the date of entry of this Order.

DATED: _____

The Honorable D. Michael Chappell
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

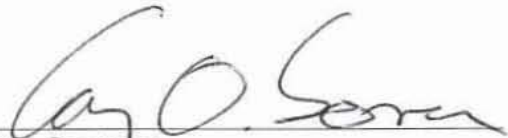
I hereby certify that on May 12, 2011 the foregoing *[Proposed] Order Granting Unopposed Motion of Third Party Fulton County Health Center for In Camera Treatment of Exhibits and Underlying Data* was filed electronically with the Office of the Secretary through the Federal Trade Commission E-Filing System.

I also certify that on May 12, 2011 one paper copy of the foregoing *[Proposed] Order* was served by ordinary U.S. Mail, first class postage fully pre-paid, and one electronic copy of the motion was served by electronic mail upon:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, H-106
Washington, D.C. 20580
oalj@ftc.gov

Jeanne Liu
Attorney, Bureau of Competition
U.S. Federal Trade Commission
Complaint Counsel
601 New Jersey Ave, NW
Washington, D.C. 20001
jliu@ftc.gov

David Marx, Jr.
McDermott Will & Emery LLP
Counsel for Respondent
227 W. Monroe Street
Suite 4400
Chicago, IL 60606
dmarx@mwe.com

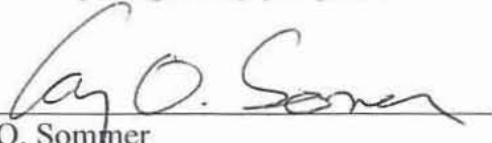


Gary O. Sommer
HEBAN, SOMMER & MURPHREE, LLC
200 Dixie Hwy.
Rossford, Ohio 43460
419.662.3100
sommer@hsm-law.net
Attorney for Third Party
Fulton County Health Center

COPY CERTIFICATION

I hereby certify that the electronic copy of the *[Proposed] Order Granting Unopposed Motion of Third Party Fulton County Health Center for In Camera Treatment of Exhibits and Underlying Data* filed with the Office of the Secretary through the Federal Trade Commission E-Filing System is a true and correct copy of the paper original and that a paper copy being filed with the Secretary on this date by ordinary U.S. Mail, first class postage fully pre-paid.

Dated: May 12, 2011



Gary O. Sommer
HEBAN, SOMMER & MURPHREE, LLC
200 Dixie Hwy.
Rossford, Ohio 43460
419.662.3100
sommer@hsm-law.net
Attorney for Third Party
Fulton County Health Center