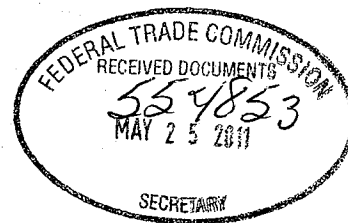


ORIGINAL

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



In the Matter of)
)
)

ProMedica Health System, Inc.,)
Respondent.)
)

DOCKET NO. 9346

ORDER GRANTING COMPLAINT COUNSEL'S
MOTION FOR *IN CAMERA* TREATMENT

I.

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice and the Scheduling Order entered in this matter, on May 5, 2011, Complaint Counsel filed a motion seeking *in camera* treatment for 22 of Complaint Counsel's proposed exhibits ("Motion"). Complaint Counsel states that its Motion is unopposed. As set forth below, the Motion is GRANTED.

II.

Under Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, the Administrative Law Judge may order that material "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." 16 C.F.R. § 3.45(b). Accordingly, in proceedings at the Federal Trade Commission, "requests for *in camera* treatment must show 'that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved.'" *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 1984 FTC LEXIS 60, at *1 (1984), quoting *In re H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). Applicants for *in camera* treatment must "make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury." *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). If the applicants for *in camera* treatment make this showing, the importance of the information in explaining the rationale of decisions at the Commission is "the principal countervailing consideration weighing in favor of disclosure." *Id.*

The Federal Trade Commission recognizes the "substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons." *Hood*, 58 F.T.C. at 1186. A full and open record of the adjudicative proceedings promotes public understanding of decisions at the Commission. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 458 (1977). A full and open record also provides guidance to

persons affected by its actions and helps to deter potential violators of the laws the Commission enforces. *Hood*, 58 F.T.C. at 1186. The burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Id.* at 1188.

The Commission has recognized that it may be appropriate to provide *in camera* treatment for business records to be introduced as evidence. *In re Champion Spark Plug Co.*, 1982 FTC LEXIS 85, at *2 (April 5, 1982); *see Hood*, 58 F.T.C. at 1188-89; *Kaiser Aluminum*, 103 F.T.C. at 500. Where *in camera* treatment is granted for business records, such as business strategies, marketing plans, pricing policies, or sales documents, it is typically extended for two to five years. *E.g.*, *In re Union Oil Co. of Cal.*, 2004 FTC LEXIS 223, at *2 (Nov. 22, 2004); *In re Int'l Ass'n of Conference Interpreters*, 1996 FTC LEXIS 298, at *13-14 (June 26, 1996); *Champion Spark Plug*, 1982 FTC LEXIS 85 at *2 and 1982 FTC LEXIS 92, at *2 (March 4, 1982). In addition, there is a presumption that *in camera* treatment will not be accorded to information that is more than three years old. *Conference Interpreters*, 1996 FTC LEXIS 298, at *15 (citing *General Foods*, 95 F.T.C. at 353; *Crown Cork*, 71 F.T.C. at 1715).

III.

Complaint Counsel moves for *in camera* treatment for twenty-two of its proposed trial exhibits. Eight of these exhibits relate to Complaint Counsel's expert reports or deposition testimony. Complaint Counsel states that these materials rely on and discuss confidential business information documents and testimony provided to Complaint Counsel by the Respondent, third-party hospitals, third-party payers and other sources. Complaint Counsel further states that it has filed the instant Motion for *in camera* treatment because the reports and testimony integrate the confidential information of multiple parties and, as such, those parties could not readily review the expert reports for the purpose of seeking *in camera* treatment of their own information, without learning the confidential business information of others. With respect to deposition transcript designations, Complaint Counsel's request for *in camera* treatment is limited to certain page and line numbers.

The remaining fourteen exhibits for which Complaint Counsel seeks *in camera* treatment are electronic data files produced to Complaint Counsel by third-party payers, hospitals and government entities. Complaint Counsel states that the claims and admissions data – which list admissions, discharged patient zip codes, billed charges and revenues, among other things – is competitively sensitive. Complaint Counsel additionally states that the data files include “sensitive personal information,”¹ relating to

¹ The Commission's Rules define “sensitive personal information” as follows:

“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.

medical treatment, such as patient zip codes and dates of birth, treatment codes and locations of treatment, and other patient-specific data. Most of the non-parties who produced these data files have also moved for *in camera* treatment for their respective claims files. Those requests have been granted permanent *in camera* treatment by Order dated May 25, 2011.

Complaint Counsel supports its Motion with declarations from an attorney and an economist from the Federal Trade Commission and with declarations from various third-parties whose information Complaint Counsel seeks to protect. Complaint Counsel's request is narrowly tailored and Complaint Counsel has met its burden of demonstrating that the documents for which it seeks *in camera* treatment meet the standards of Rule 3.45.

IV.

Based upon the foregoing, Complaint Counsel's Motion is GRANTED. *In camera* treatment is GRANTED for the exhibits listed below. With respect to the eight exhibits containing Respondent's or third-parties' competitively sensitive information, *in camera* treatment is granted for a period of five years, consistent with previous orders in other matters concerning healthcare-related information. *E.g.*, *In re Evanston Northwestern Healthcare Corp.*, 2005 FTC LEXIS 28 (Feb. 9, 2005); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109 (April 23, 2004). With respect to the fourteen exhibits containing personally sensitive information, permanent *in camera* treatment is granted, consistent with Rule 3.45. 16 C.F.R. 3.45(b) (Sensitive personal information "shall be accorded permanent *in camera* treatment unless disclosure or an expiration date is required or provided by law.").

PX1923 at 318:10-319:21	Dr. Robert J. Town PI Deposition Transcript Designations	June 1, 2016
PX2124	Declaration of Dr. Robert J. Town (Filed Under Seal)	June 1, 2016
PX2125	Exhibits for Declaration of Dr. Robert J. Town (Filed Under Seal)	June 1, 2016
PX2138	Supplemental Declaration of Dr. Robert J. Town (Filed Under Seal)	June 1, 2016
PX2139	Exhibits for Supplemental Declaration of Dr. Robert J. Town (Filed Under Seal)	June 1, 2016
PX2148	Dr. Robert J. Town Part III Report	June 1, 2016

PX1850	Dr. Robert J. Town Part III Rebuttal Report	June 1, 2016
PX1851	Dr. Robert J. Town Part III Rebuttal Report Exhibits	June 1, 2016
PX1800	Aetna Data	Permanent
PX1801	Anthem/Wellpoint Data	Permanent
PX1802	Cigna Data	Permanent
PX1803	FrontPath/MedAssets Data	Permanent
PX1804	Humana Data	Permanent
PX1805	Medical Mutual of Ohio Data	Permanent
PX1806	United Healthcare Data	Permanent
PX1807	Blue Cross Blue Shield of Michigan Data	Permanent
PX1809	Michigan Health & Hospital Association Service Corporation Data	Permanent
PX1810	Ohio Hospital Association Data	Permanent
PX1813	Mercy Health Partners Data	Permanent
PX1814	University of Toledo Medical Center Data	Permanent
PX1815	Fulton County Health Center Data	Permanent
PX1816	Wood County Hospital Data	Permanent

ORDERED:



 D. Michael Chappell
 Chief Administrative Law Judge

Date: May 25, 2011