

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



\_\_\_\_\_  
In the Matter of )  
 )  
PROMEDICA HEALTH SYSTEM, INC. )  
a corporation. )  
\_\_\_\_\_ )

Docket No. 9346  
**PUBLIC**

**RESPONDENT PROMEDICA HEALTH SYSTEM, INC.'S  
UNOPPOSED SUPPLEMENTAL MOTION FOR  
IN CAMERA TREATMENT OF NEW TRIAL EXHIBITS**


Respondent ProMedica Health System, Inc., hereby moves for *in camera* treatment of certain new trial exhibits, pursuant to 16 C.F.R. §3.45, Paragraph 7 of the Scheduling Order, and Judge Chappell's Order dated May 24, 2011, granting Complaint Counsel's Motion to Replace Witness with Equivalent Witness on Complaint Counsel's Witness List.

In support of this motion, Respondent provides its accompanying memorandum, table, and a Supplemental Declaration of Lori Johnston.

WHEREFORE, Respondent ProMedica Health System, Inc. respectfully requests that this Court grant *in camera* treatment to the documents described in the attached memorandum and listed in the accompanying table.

Respectfully submitted,

Dated: June 1, 2011

  
\_\_\_\_\_  
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*Attorneys for Respondent ProMedica  
Health System, Inc.*

I, Christine Devlin, hereby certify that I served a true and correct copy of the foregoing Respondent's Unopposed Supplemental Motion for *In Camera* Treatment of New Trial Exhibits, Public Version, upon the following individuals by hand on June 1, 2011.

Hon. D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room H110  
Washington, DC 20580

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room 172  
Washington, DC 20580

I, Christine Devlin, hereby certify that I served a true and correct copy of the foregoing Respondent's Unopposed Supplemental Motion for *In Camera* Treatment of New Trial Exhibits, Public Version, upon the following individuals by electronic mail on June 1, 2011.

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Jeffrey H. Perry  
Sara Y. Razi  
Jeanne H. Liu  
Alexis J. Gilman  
Stephanie L. Reynolds  
Janelle L. Filson  
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\_\_\_\_\_  
Christine Devlin

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Docket No. 9346  
**PUBLIC**

**RESPONDENT PROMEDICA HEALTH SYSTEM, INC.’S MEMORANDUM IN  
SUPPORT OF ITS UNOPPOSED SUPPLEMENTAL MOTION FOR *IN CAMERA*  
TREATMENT OF NEW TRIAL EXHIBITS**

Pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Adjudicative Practice, Respondent ProMedica Health System, Inc. (“ProMedica”) submits its Memorandum in Support of its Unopposed Supplemental Motion for *In Camera* Treatment of New Trial Exhibits.

**I. Introduction**

On May 24, 2011, this Court granted Complaint Counsel’s unopposed motion to modify its proposed witness list to substitute a representative of non-party, FrontPath Health Coalition (“FrontPath”), with an equivalent witness. In light of this substitution, Respondent ProMedica, with Complaint Counsel’s consent, supplemented the final joint exhibit list with 12 new documents. Counsel for Respondent reviewed these 12 documents and determined that all 12 require *in camera* treatment because they are competitively sensitive documents that relate to payor contracting between St. Luke’s Hospital (“St. Luke’s”) and FrontPath. Public disclosure would result in a serious competitive injury to Respondent, St. Luke’s and non-party, FrontPath. Counsel for ProMedica has determined that all 12 exhibits qualify under the standards as set forth in Paragraph 7 of the scheduling order for *in camera* treatment. These documents are similar to documents for which Your Honor has previously granted *in camera* treatment on May 25, 2011. Complaint Counsel do not oppose this motion.

## II. **The Clearly Defined, Serious Injury Standard**

An applicant seeking *in camera* protection for material offered into evidence may receive *in camera* treatment when “its public disclosure will likely result in a clearly defined, serious injury.” 16 C.F.R. § 3.45(b). An applicant can meet that standard by establishing that the evidence is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *See In the Matter of Evanston Northwestern Healthcare Corp.*, 2005 F.T.C. LEXIS 27, at \*1 (Feb. 9, 2005) (internal citations omitted). In making this determination, administrative courts review six factors to determine secrecy and materiality: (1) the extent to which the information is known outside of the applicant’s 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. *See In the Matter of Bristol-Myers Co.*, 90 FTC LEXIS 455, at \*5-6 (Nov. 11, 1997).

## III. **The 12 New Trial Exhibits Meet The Clearly Defined, Serious Injury Standard**

All six factors support granting Respondent’s supplemental motion for *in camera* treatment. First, Respondent treats as confidential the 12 documents for which it seeks *in camera* treatment. The information in these materials is not known to the public or generally outside ProMedica or St. Luke’s. These documents are not a matter of public record and have not been fully disclosed in any public context.

Second, the materials reflect the strategic decision-making of senior executives from St. Luke’s. The confidential information in these documents is not generally known to all

employees within ProMedica or St. Luke's. These documents regard contracts and negotiations between St. Luke's and non-party, FrontPath. The documents represent the business goals and competitive strategy of St. Luke's senior executives. The contracting terms and rate data are not generally known throughout the organizations.

Third, St. Luke's has carefully guarded the secrecy of these materials. St. Luke's produced the documents pursuant to the discovery process, but otherwise has not publicly disclosed the information found within the confidential contracts and communications.

Fourth, competitor hospitals, such as Mercy Health Partners or the University of Toledo Medical Center, would benefit significantly from gaining access to these materials. The materials reflect St. Luke's business strategies and contracting initiatives, which are competitively sensitive. These documents include correspondence revealing negotiations with FrontPath. The documents also include contracts with FrontPath and include confidential rates. Public disclosure of those rates would cause competitive harm to St. Luke's and to non-party, FrontPath, because they represent the complex negotiating process and are unique to the contracting parties. Hospital competitors and other commercial health plans would benefit significantly and unfairly from gaining access to these materials.

Fifth, St. Luke's has spent significant money, time, and effort in developing its goals for and negotiating with commercial health plans. The public disclosure of this information would harm Respondent and St. Luke's business operations.

It would be difficult for another party to replicate the information found in these materials because they reflect the work product of senior executives with years of experience in these organizations. The materials are unique and tailored to the respective entities and not known to the general public.

Respondent and St. Luke's would suffer irreparable injury if the information contained in these documents were disclosed to the public. Disclosure of payor contracting and negotiating documents would cause injury to St. Luke's, ProMedica, and FrontPath because competitors could access this competitively sensitive rate information. Your Honor has recognized the confidential and competitively sensitive nature of payor contracts and negotiations by granting *in camera* treatment for these types of documents in this matter. See Orders Granting Respondent's Renewed Motion for *In Camera* Treatment, and Non-Parties' Motions for *In Camera* Treatment, dated May 25, 2011.

Finally, the information for which Respondent seeks *in camera* treatment remains relevant and significant today. Respondent and St. Luke's seek *in camera* treatment for information within three years old. Nevertheless, even aged data is sensitive and remains worthy of protection because they reflect St. Luke's business strategies and can impact future negotiations between Respondent or St. Luke's and commercial health plans. Disclosure of these materials would cause competitive harm to ProMedica, St. Luke's, and FrontPath in future contract negotiations. See *in re Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. LEXIS 500, at \*2 (May 25, 1984) (holding that material that was over five years old was still sensitive and deserving of *in camera* treatment where "a serious injury would be done by release of this information, which they have never made available to the public").

#### IV. **Expiration Date**

ProMedica seeks temporary *in camera* treatment of these 12 confidential exhibits. Specifically, ProMedica seeks *in camera* treatment for a period of three years. Administrative courts grant *in camera* treatment for business records for a period of two to five years. See *Evanston Northwestern Healthcare Corp.*, 2005 F.T.C. LEXIS 27, at \*2 (Feb. 9, 2005); *In the*

*Matter of E.I. Dupont de Nemours & Co.*, 97 F.T.C. LEXIS 116, 118 (Jan. 21, 1981) (granting financial data *in camera* treatment for three years); *In re Int'l Ass. Of Conf. Interpreters*, 1996 F.T.C. LEXIS 298 (June 26, 1996) (granting contracts *in camera* treatment for three years).


Three years is necessary to protect documents related to St. Luke's agreements with FrontPath because those contracts may last several years. Therefore, documents that are three to five years old remain relevant, material, and confidential, and warrant *in camera* treatment.

V. **Conclusion**

Pursuant to 16 C.F.R. §3.45, ProMedica respectfully moves for *in camera* treatment of the proposed exhibits identified in the accompanying table.

Dated: June 1, 2011

Respectfully submitted,



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*Attorneys for Respondent ProMedica  
Health System, Inc.*

I, Christine Devlin, hereby certify that I served a true and correct copy of the foregoing Respondent's Memorandum in Support of its Unopposed Supplemental Motion for *In Camera* Treatment of New Trial Exhibits, Public Version, upon the following individuals by hand on June 1, 2011.

Hon. D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
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Christine Devlin

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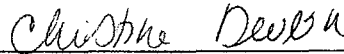
Docket No. 9346

**STATEMENT REGARDING MEET AND CONFER**

On May 27, 2011, Respondent's Counsel, Stephen Wu, conferred telephonically with Complaint Counsel, Jeanne Liu, regarding Respondent's Supplemental Motion for *In Camera* Treatment of New Trial Exhibits. Complaint Counsel indicated that they do not oppose Respondent's motion.

Dated: June 1, 2011

Respectfully submitted,



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*Attorneys for Respondent ProMedica  
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Docket No. 9346

**[PROPOSED] ORDER GRANTING RESPONDENT’S UNOPPOSED  
SUPPLEMENTAL MOTION FOR *IN CAMERA* TREATMENT  
OF NEW TRIAL EXHIBITS**

Upon consideration of Respondent, ProMedica Health System, Inc.’s Unopposed Supplemental Motion for *In Camera* Treatment of New Trial Exhibits, it is hereby ordered that the Motion is **GRANTED** and *in camera* treatment will be given to the exhibits listed in the Table below for the period of time indicated.

<b>RX Number</b>	<b>Length of <i>In Camera</i> Treatment</b>	<b>Expiration of <i>In Camera</i> Treatment</b>
1913	Three Years	June 1, 2014
1914	Three Years	June 1, 2014
1915	Three Years	June 1, 2014
1916	Three Years	June 1, 2014
1917	Three Years	June 1, 2014
1918	Three Years	June 1, 2014
1919	Three Years	June 1, 2014
1920	Three Years	June 1, 2014
1921	Three Years	June 1, 2014
1922	Three Years	June 1, 2014

1923	Three Years	June 1, 2014
1924	Three Years	June 1, 2014

Dated: June \_\_, 2011.

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The Honorable D. Michael Chappell  
Chief Administrative Law Judge