



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

In the Matter of)
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ProMedica Health System, Inc.)
a corporation.)
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Docket No. 9346

PUBLIC VERSION

**COMPLAINT COUNSEL'S UNOPPOSED MOTION TO PLACE
COMPLAINT ON THE PUBLIC RECORD**

Complaint Counsel respectfully moves for an order placing an unredacted version of the Complaint on the public record. The Complaint contains quotes from the Respondent's documents and other material that had been protected from disclosure during the pre-complaint investigation.¹ Complaint Counsel initially placed a redacted version of the Complaint on the public record, after providing Respondent's counsel the opportunity to examine the Complaint and identify any information that Respondent may claim is confidential.

Complaint Counsel now moves to place the unredacted Complaint on the public record. Through its counsel, Respondent has informed Complaint Counsel that it does not oppose this motion. A virtually-identical version of the Complaint has already been unsealed in the related district court proceeding, and thus the redacted information is already in the public domain. For the administrative complaint to remain redacted would serve no practical purpose and would likely cause confusion to have certain material remain *in camera* in the administrative proceeding but on the public record in the district court proceeding.

¹ See 15 U.S.C. §§ 46(f), 57b-2(b),(c); 16 C.F.R. § 4.10(d).

Moreover, as discussed below, the longstanding public policy in favor of open access to adjudicative records, as reflected in the Commission's Rules of Practice and the applicable law, creates a strong presumption in favor of public access to the full Complaint.

ARGUMENT

There is a strong presumption in favor of open access to Commission adjudicative proceedings. *Detroit Auto Dealers Ass'n, Inc.*, D-9189, 1985 FTC LEXIS 90, at *3 (June 7, 1985); *see also H.P. Hood*, 58 F.T.C. 1184, 1186 (1961) ("To foreclose [FTC] hearings and the evidence adduced therein from the scrutiny of . . . interested persons would serve in large measure to defeat the very reason for our existence."). Open proceedings permit the public to evaluate the "fairness of the Commission's work," and they "provide[] guidance to persons affected by [the Commission's] actions." *Intel Corp.*, D-9288, 1999 FTC LEXIS 227, at *1 (Feb. 23, 1999) (citing *The Crown Cork & Seal Co.*, 71 F.T.C. 1714, 1714-15 (1967)). Neither embarrassment nor the desire to protect business information are sufficient bases for obscuring material from the public. *See H.P. Hood*, 58 F.T.C. LEXIS at 1184 ("Quite clearly the mere embarrassment of the movant should not foreclose public disclosure. Nor should documents be sealed simply on the ground that they contain information which competitors for business reasons are extremely desirous to possess."). Instead, Respondent must demonstrate that it will suffer "a clearly defined, serious injury" as a result of disclosure. 16 C.F.R. § 3.45 (b). Having indicated it will not oppose this motion to place the Complaint on the public record, Respondent clearly does not allege such an injury here.

Here, the potentially sensitive information in the Complaint is limited to: (1) quotes from Respondent's documents concerning their anticompetitive intentions with respect to the Acquisition (*see, e.g.*, Compl. ¶¶ 2, 25); and (2) quotes from testimony taken under oath from

Respondent's executives (*see, e.g.*, Compl. ¶¶ 24, 38).² There are no trade secrets revealed in the Complaint. In fact, none of the information or quotes in the Complaint is sufficiently specific to constitute even competitively sensitive information. The Complaint does not reveal reimbursement rates or any other customer-specific information that would give any party a competitive advantage over the Respondent, nor does it reveal any "secret formulas, research or processes" for which *in camera* treatment is appropriate.

Moreover, the redacted quotes implicate the very heart of Complaint Counsel's case. Without this information in the public record, the matter's ultimate resolution is less useful as a guide to practitioners and the business community. The public has a right to see the exact wording used in Respondent's documents and investigational hearings. The need for open proceedings is particularly important here, in light of the tremendous interest in antitrust enforcement in the healthcare sector as the industry responds to healthcare reform.

² The Complaint also refers in Paragraph 36 to certain business plans of Mercy Health Partners ("Mercy") and University of Toledo Medical Center ("UTMC"). Mercy and UTMC were informed of the content of Paragraph 36 and indicated to Complaint Counsel that they consent to its disclosure if the Complaint is placed on the public record.

CONCLUSION

For the foregoing reasons, Complaint Counsel respectfully request that the Court authorize placement of the original, unredacted Complaint on the public record.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Matthew J. Reilly", is written over a horizontal line.

Matthew J. Reilly, Esq.
Jeffrey H. Perry, Esq.
Sara Y. Razi, Esq.
Jeanne H. Liu, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: 202-326-2350
mreilly@ftc.gov

Dated: January 24, 2011

Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2011, I filed *via* hand a paper original and electronic copy of the foregoing COMPLAINT COUNSEL'S UNOPPOSED MOTION TO PLACE COMPLAINT ON THE PUBLIC RECORD and PROPOSED ORDER GRANTING COMPLAINT COUNSEL'S UNOPPOSED MOTION TO PLACE COMPLAINT ON THE PUBLIC RECORD, with:

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

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, H-106
Washington, DC 20580

I hereby certify that on January 24, 2011, I delivered *via* electronic mail delivery a copy of the foregoing with:

David Marx, Jr.
McDermott Will & Emery LLP
227 W. Monroe Street
Chicago, IL 60606
312-372-2000
dmarx@mwe.com

Stephen Y. Wu
McDermott Will & Emery LLP
227 W. Monroe Street
Chicago, IL 60606
312-372-2000
swu@mwe.com

Erin C. Arnold
McDermott Will & Emery LLP
227 W. Monroe Street
Chicago, IL 60606
312-372-2000
earnold@mwe.com

Amy J. Carletti
McDermott Will & Emery LLP
227 W. Monroe Street
Chicago, IL 60606
312-372-2000
acarletti@mwe.com

Amy Hancock
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
ahancock@mwe.com

Jennifer L. Westbrook
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
jwestbrook@mwe.com

Vincent C. van Panhuys
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
vvanpanhuys@mwe.com

Carrie Amezcua
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
camezcua@mwe.com

Christine G. Devlin
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
cdevlin@mwe.com

Daniel Powers
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
dgpowers@mwe.com

James Camden
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
jcamden@mwe.com

Kevin Showman
Litigation Case Manager
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
kshowman@mwe.com

Pamela A. Davis
Antitrust Specialist
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
pdavis@mwe.com



Stephanie L. Reynolds
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: 202-326-2177
sreynolds@ftc.gov