

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 ON NON-PARTIES' MOTIONS 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, several non-parties filed motions for *in camera* treatment for materials that the parties have listed on their exhibit lists as materials that might be introduced at trial in this matter. Neither Complaint Counsel nor Respondent have filed an opposition to any of the motions addressed below filed by the non-parties.

II.

Under Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, the Administrative Law Judge may order that material offered into evidence "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." 16 C.F.R. § 3.45(b). 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.

16 C.F.R. § 3.45(b).

With respect to confidential information that does not constitute sensitive personal information, 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).

“[R]equests 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, 500 (1984), quoting *In re H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). 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.” *In re General Foods Corp.*, 95 F.T.C. at 355.

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. Moreover, 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). However, a request for *in camera* treatment by a non-party warrants “special solicitude.” *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714, 1715 (1967).

Under Commission Rule 3.45(b)(3), indefinite *in camera* treatment is warranted only “in unusual circumstances,” including circumstances in which “the need for confidentiality of the material . . . is not likely to decrease over time.” 16 C.F.R. § 3.45(b)(3). The Commission has nonetheless recognized that “in some unusual cases ‘the competitive sensitivity or the proprietary value of the information for which *in camera* treatment is requested will not necessarily diminish, and may actually increase, with the passage of time.’” *In re Coca-Cola Co.*, 1990 FTC LEXIS 364, at *7 (Oct. 17, 1990) (quoting Commission comments on amendments to the Rule). Under Commission Rule 3.45(b), permanent *in camera* treatment is provided for sensitive personal information. 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.”).

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 provided 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 cases involving confidential documents concerning healthcare-related information, *in camera* treatment is typically provided for a period of five years. *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).

In order to sustain the burden for withholding documents from the public record and to overcome the presumption that *in camera* treatment may be withheld for information that is three or more years old, an affidavit or declaration demonstrating that a document is sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury is required. See *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at *2-3 (Apr. 23, 2004). *In camera* treatment will not be provided for entire depositions. *In re Aspen Tech., Inc.*, 2004 FTC LEXIS 56, at *5-6 (May 5, 2004). Rather, a party or non-party is required to identify the page and line numbers of the depositions that contain information that qualifies for *in camera* treatment and provide a justification for such request.

III.

As set forth below, each of the non-parties filed separate motions for *in camera* treatment. With one exception, each motion was supported by an affidavit or declaration of an individual within the company who had reviewed the documents. These affidavits and declarations supported the applicants' claims that the documents are sufficiently secret and sufficiently material to their businesses that disclosure would result in serious competitive injury. That showing was then balanced against the importance of the information in explaining the rationale of decisions at the Commission. Each motion attached the documents or deposition testimony for which *in camera* treatment was sought. Where *in camera* treatment for deposition testimony was sought, most non-parties narrowed their requests to specific page and line numbers. Those non-parties that did not narrow such requests are given the opportunity to do so. The specific motions of each of the non-parties are analyzed using the standards set forth above and are addressed below in alphabetical order.

A.

Aetna Inc. ("Aetna"):

Non-party Aetna seeks *in camera* treatment for several documents Complaint Counsel intends to introduce into evidence. Supporting its motion with a declaration from its Senior Network Manager in Ohio, Aetna seeks *in camera* treatment for: 1) business documents containing information which, if disclosed, would result in serious competitive injury to Aetna; and 2) documents containing sensitive personal information. In addition, by its Supplemental Motion, Aetna seeks *in camera* treatment for one additional document: PX02531.

The business documents for which Aetna seeks *in camera* treatment fall into 9 categories: 1) compensation schedules, which are provider-specific schedules that list, by service and bill code, the rates Aetna pays to various hospitals for services; 2) spreadsheets and pie charts showing market share and revenues from inpatient and outpatient charges; 3) e-mails dealing with contract negotiations between Aetna and ProMedica; 4) e-mails between Aetna employees analyzing the impact of St. Luke's merging with ProMedica, which include predictions regarding how the merger would potentially impact rates for Aetna; 5) e-mails and letters regarding negotiations of contracts and rates with individual hospitals; 6) internal spreadsheets including information from various Aetna provider hospitals and information regarding Aetna

membership, which contain sensitive information regarding contracts and revenues; 7) a spreadsheet that lists financial information regarding total claims allowed, percentages of market, rate increases, and detailed information regarding the breakdown of Aetna revenues; 8) e-mails regarding Aetna's relationship with a particular business whose employees are Aetna members, revealing how Aetna negotiates contracts and rates with providers that are part of its network; and 9) deposition testimony and a declaration of an Aetna employee revealing information on the breakdown of how Aetna's members utilize various providers, Aetna's market share of insurance business in the area, information on reimbursement rates, and contract relationships with various hospitals. PX02531, the subject of Aetna's supplemental motion, falls into Category 8 and is an e-mail string that reveals the manner in which Aetna negotiates when a business is potentially going to switch to another insurance provider.

For these categories of documents, Aetna seeks *in camera* treatment for a period of five years. In addition, Aetna seeks permanent *in camera* treatment for PX01800, a data file that Aetna states includes claims data for numerous Aetna insureds, including sensitive health information regarding medical procedures undergone by various insured patients.

The declarations provided by Aetna in support of its motion and its supplemental motion describe in detail the measures that Aetna has taken to protect the confidentiality of the documents for which it seeks *in camera* treatment and explain the competitive harm Aetna would suffer if such documents were made publicly available. Accordingly, Aetna has met its burden of demonstrating that the documents for which it seeks *in camera* treatment should be accorded such protection.

In camera treatment, for a period of five years, to expire on June 1, 2016, is GRANTED for the documents listed in Exhibits B – I to Aetna's motion; the declaration listed in Exhibit J to Aetna's motion; and PX02531.

Aetna's motion is DENIED WITHOUT PREJUDICE for the deposition transcripts listed in Exhibit J to Aetna's motion because Aetna did not narrow its request to only the portions of testimony containing confidential information. Aetna is hereby instructed to review the deposition testimony and may file a renewed motion seeking *in camera* treatment for only those pages and line numbers that contain information that meets the standard for *in camera* treatment.

Permanent *in camera* treatment is GRANTED for PX01800, a document that contains sensitive personal information.

B.

Ambac Assurance Corporation ("Ambac"):

Non-party Ambac seeks *in camera* treatment for several documents and deposition excerpts that Complaint Counsel and Respondent have designated for possible introduction into evidence. Ambac supports its motion with a declaration from its Managing Director of Health Care and Housing Portfolio Risk Management Group.

Ambac seeks *in camera* treatment for documents that relate either to Ambac's monitoring and analysis of entities whose bonds it insures or to the development and implementation of negotiating positions and strategies vis-à-vis those debtors. Specifically, the documents Ambac seeks to shield from disclosure: 1) disclose details of specific terms that Ambac proposed to St. Luke's; 2) disclose details of negotiations concerning Ambac's consent to the affiliation between ProMedica and St. Luke's; 3) reveal details of criteria used by Ambac in evaluating St. Luke's as a credit risk; 4) contain information about Ambac's decision-making processes, options, and strategic considerations in negotiating with financially troubled debtors; 5) disclose information concerning the frequency with which Ambac opts to take certain negotiating paths; 6) disclose details about Ambac's approach to measuring a debtor's operating performance; and 7) reveal details of internal criteria Ambac employs for evaluating troubled debtors. In addition, Ambac seeks *in camera* treatment for selected portions, narrowed by page and line, of the deposition transcript of its former employee Bruce E. Gordon. For these categories of documents, Ambac seeks *in camera* treatment for a period of five years.

The declaration provided by Ambac in support of its motion describes in detail the measures that Ambac has taken to guard the secrecy of the information. Ambac also details the competitive harm it would suffer if these documents were publicly disclosed. Accordingly, Ambac has met its burden of demonstrating that the documents for which it seeks *in camera* treatment should be accorded such protection.

In camera treatment, for a period of five years, to expire on June 1, 2016, is GRANTED for the documents listed as Exhibits 1 – 26 to Ambac's motion.

C.

Blue Cross Blue Shield of Michigan ("BCBSM"):

Non-party Blue Cross Blue Shield of Michigan seeks *in camera* treatment for two documents that Complaint Counsel has designated for possible introduction into evidence. BCBSM supports its motion with a declaration from its Vice President of Provider Contracting and Network Administration.

BCBSM seeks *in camera* treatment for two documents: PX01807 and PX02080. BCBSM states that PX01807 is a compilation of BCBSM and Blue Care Network claims data and health insurance product information. Among the data files included in the electronic files produced for each inpatient admission or outpatient treatment episode are unique patient identifiers, zip code, age, and gender of each patient. This database contains sensitive personal information.

BCBSM states that PX02080 is the signed declaration from the Director of Hospital Contracting and Policy for BCBSM and contains highly confidential information regarding BCBSM's contractual relationship with Spectrum Health Systems. The declaration provided by BCBSM in support of its motion describes the harm BCBSM would suffer if this information was publicly disclosed. BCBSM has met its burden of demonstrating that PX02080 should be

accorded *in camera* protection. However, because BCBSM has not demonstrated that indefinite *in camera* treatment is appropriate for PX02080, its motion is DENIED in part.

In camera treatment, for a period of five years, to expire on June 1, 2016, is GRANTED for PX02080.

Permanent *in camera* treatment is GRANTED for PX01807, a document that contains sensitive personal information.

D.

Connecticut General Life Insurance Co. ("CIGNA"):

Non-party Connecticut General Life Insurance Co. seeks *in camera* treatment for several documents and deposition excerpts that Complaint Counsel and Respondent have designated for possible introduction into evidence. CIGNA supports its motion with declarations from its Director of Contracting and from a financial analysis specialist.

CIGNA seeks *in camera* treatment for three sets of materials: 1) three sets of electronic patient claims data; 2) ten documents containing critical, competitively sensitive information; and 3) certain tracts from the investigational hearing transcript of CIGNA's Director of Contracting. For the electronic patient claims data, CIGNA seeks permanent *in camera* treatment, stating that the data reveals highly confidential personal information about CIGNA's members and their medical conditions and treatment. For the documents, CIGNA seeks *in camera* treatment for periods of five to fifteen years. For the investigational hearing transcript, CIGNA seeks *in camera* treatment for five years.

The declaration provided by CIGNA in support of its motion describes in detail the extensive measures that CIGNA has taken to preserve the confidentiality of the information for which it seeks *in camera* treatment. CIGNA also details the serious competitive harm it would suffer if these documents were publicly disclosed. With respect to the investigational hearing transcript, CIGNA has tailored its request to certain excerpts reflecting confidential information. Accordingly, CIGNA has met its burden of demonstrating that the documents for which it seeks *in camera* treatment should be accorded such protection. However, with respect to the eight documents other than the claims data, CIGNA has not made the necessary showing to warrant *in camera* treatment for a period longer than five years, the time period typically provided for documents such as these.

Permanent *in camera* treatment is GRANTED for the three sets of electronic patient claims data described in CIGNA's motion, documents that contain sensitive personal information.

In camera treatment is GRANTED for a period of five years, to expire on June 1, 2016, for the two documents for which CIGNA sought *in camera* treatment for a period of five years and for the deposition excerpts which CIGNA designated in its motion.

For the three documents for which CIGNA sought *in camera* treatment for a period of fifteen years, and for the five documents for which CIGNA sought *in camera* treatment for a period of ten years, CIGNA's motion is GRANTED IN PART. *In camera* treatment is GRANTED for these documents for a period of five years, to expire on June 1, 2016.

E.

Findley Davies, Inc. ("Findley Davies"):

Non-party Findley Davies, Inc. seeks *in camera* treatment for several documents and deposition excerpts that Complaint Counsel and Respondent have designated for possible introduction into evidence. Findley Davies supports its motion with a declaration from its Chief Actuary.

Findley Davies seeks *in camera* treatment for documents that contain analysis of ProMedica and St. Luke's retirement plans. Specifically, the documents contain actual and estimated calculations of funding status and variables relied upon in preparation of those calculations; final and draft financial disclosure statements and actuarial valuations; and projected summaries and valuations of retirement benefits, liabilities, funding status, and cash contributions needed to avoid penalties. Findley Davies states that this information is based on confidential, sensitive, and personal information provided by St. Luke's and ProMedica regarding its employees. Findley Davies further states that revelation of how it prepares its reports is commercially sensitive, the disclosure of which would cause it serious commercial harm. Findley Davies also seeks *in camera* treatment for certain narrowly tailored excerpts of the deposition of its lead actuary. For each of these documents, Findley Davies seeks *in camera* treatment for a period of five years.

The declaration provided by Findley Davies in support of its motion describes in detail the measures that Findley has taken to guard the secrecy of the information. Findley Davies also details the competitive harm it would suffer if these documents were publicly disclosed. Accordingly, Findley Davies has met its burden of demonstrating that the documents for which it seeks *in camera* treatment should be accorded such protection.

In camera treatment, for a period of five years, to expire on June 1, 2016, is GRANTED for the documents listed as Exhibits 1 – 17 to Findley Davies' motion.

F.

FrontPath Health Coalition ("FrontPath"):

Non-party FrontPath Health Coalition seeks *in camera* treatment for six documents that Complaint Counsel and Respondent have designated for possible introduction into evidence. FrontPath supports its motion with a declaration from its President and CEO.

FrontPath seeks *in camera* treatment for: a current contract, which contains pricing and pricing mechanisms; a spread sheet which illustrates FrontPath's method of calculating pricing for hospitals; and current pricing proposals for the University of Toledo Medical Center. For these documents, FrontPath seeks *in camera* treatment for a period of five years.

In addition, FrontPath seeks permanent *in camera* treatment for PX01803, which FrontPath states comprises medical claims data marshalled for all FrontPath members and contains sensitive personal information.

The declaration provided by FrontPath in support of its motion describes in detail the measures that FrontPath has taken to guard the secrecy of the information. FrontPath also details the competitive harm it would suffer if these documents were publicly disclosed. Accordingly, FrontPath has met its burden of demonstrating that the documents for which it seeks *in camera* treatment should be accorded such protection.

Permanent *in camera* treatment is GRANTED for the database identified as PX01803, a document that contains sensitive personal information.

For all other documents listed in FrontPath's motion, *in camera* treatment is GRANTED for a period of five years, to expire on June 1, 2016.

G.

Fulton County Health Center ("FCHC"):

Non-party Fulton County Health Center seeks *in camera* treatment for two documents that Complaint Counsel designated for possible introduction into evidence. FCHC supports its motion with an affidavit from its Administrator. The documents for which FCHC seeks *in camera* treatment are PX01815 and PX02219. For each of these documents, FCHC seeks *in camera* treatment for a period of three years.¹

FCHC states that PX01815 reveals information about what medical and other services FCHC is providing, payor mix, the geographic area in which its patients reside, and gender and ages of patients. FCHC states that PX02219 reveals patient demographics, market share data, FCHC marketing review and planning, and internally identified strengths and weaknesses.

¹ Although FCHC has sought *in camera* protection for a period of three years, *in camera* protection is typically provided for a period of five years in cases involving confidential documents concerning healthcare-related information. Moreover, other non-parties asked for and were granted *in camera* protection for similar documents for a period of five years. So that the expiration date of *in camera* treatment is consistent across exhibits provided by non-parties, which establishes consistency and furthers administrative efficiency, *in camera* treatment is provided for a period of five years for PX02219. In addition, under Rule 3.45, sensitive personal information shall be accorded permanent *in camera* treatment. By Order dated May 25, 2011, Complaint Counsel's Motion for *In Camera* Treatment was granted, providing permanent *in camera* treatment for 14 electronic data files containing sensitive personal information, including PX01815. Accordingly, permanent *in camera* treatment is granted for PX01815.

The declaration provided by FCHC in support of its motion describes in detail the measures that FCHC has taken to protect the confidentiality of the information. FCHC also details the serious competitive harm it would suffer if these documents were disclosed to its competitors. FCHC has met its burden of demonstrating that the documents for which it seeks *in camera* treatment should be accorded such protection.

In camera treatment, for a period of five years, to expire on June 1, 2016, is GRANTED for PX02219.

Permanent *in camera* treatment is GRANTED for PX01815, a document that contains sensitive personal information.

H.

Humana Inc. (“Humana”):

Non-party Humana Inc. seeks *in camera* treatment for two documents Complaint Counsel intends to introduce into evidence. Humana supports its motion with a declaration from its legal counsel. Humana seeks *in camera* treatment for an indefinite period for both of these documents.

The first document for which Humana seeks *in camera* treatment is PX02073, the declaration of one of its employees. Humana states that this document contains highly confidential and commercially sensitive business information, the disclosure of which would cause competitive harm to Humana. The declaration provided by Humana in support of its motion describes in detail the measures that Humana has taken to protect the confidentiality of the information contained in PX02073. Humana has met its burden of demonstrating that PX02073 should be accorded *in camera* treatment. However, Humana has not met its burden of demonstrating that indefinite *in camera* treatment is necessary.

The second document for which Humana seeks *in camera* treatment is PX01804, a data file that includes identifying information of the hospital, healthcare facility, or physician practice at which patients were treated and identifying information of patients, including residence zip codes, age, gender, date of discharge, primary diagnosis, source of referral, identity of patients’ physicians.

Humana’s request for *in camera* treatment for PX02073 is GRANTED IN PART. Because Humana has not made the necessary showing to warrant indefinite *in camera* treatment and because 5 years is the typical time period that *in camera* treatment is provided for documents such as these, *in camera* treatment is GRANTED for a period of five years, to expire on June 1, 2016, for PX02073.

Permanent *in camera* treatment is GRANTED for the database identified as PX01804, a document that contains sensitive personal information.

I.

MDA Engineering, Inc. (“MDA”):

Non-party MDA Engineering, Inc. seeks *in camera* treatment for a declaration it provided to Complaint Counsel and to several exhibits that include medical billings, health insurance quotations, and health insurance renewal rates. MDA has not provided sufficient information or a declaration or affidavit in support of its motion to allow a proper evaluation of its request. Accordingly, the motion is DENIED WITHOUT PREJUDICE to file a renewed motion in accordance with the standards and deadlines cited herein.

J.

Medical Mutual of Ohio (“MMO”):

Non-party Medical Mutual of Ohio seeks *in camera* treatment for several documents and deposition excerpts that Complaint Counsel and Respondent have designated for possible introduction into evidence. MMO supports its motion with a declaration from its Vice President of the Midwest Region.

MMO seeks *in camera* treatment for documents that it describes as falling into five categories: 1) claims data for MMO’s members in northwestern Ohio; 2) MMO’s contracts with healthcare providers in Lucas County; 3) documents reflecting MMO’s negotiations with St. Luke’s Hospital; 4) documents reflecting MMO’s internal analyses and negotiations with ProMedica; and, 5) deposition and hearing testimony by an MMO senior executive regarding the above categories as well as other confidential and competitively sensitive MMO information. MMO seeks permanent *in camera* treatment for the document in category 1; five years for the documents in categories 2, 3, and 4; and indefinite *in camera* treatment for the testimony in category 5.

The declaration provided by MMO in support of its motion describes the measures that MMO has taken to preserve the confidentiality of the information. MMO also details the serious competitive harm it would suffer if these documents were publicly disclosed. With respect to deposition transcripts, MMO has tailored its requests to certain excerpts reflecting confidential information. MMO has met its burden of demonstrating that the documents for which it seeks *in camera* treatment should be accorded *in camera* treatment. However, with respect to information in category 5, MMO has not met its burden of demonstrating that indefinite *in camera* treatment is necessary.

The document in category 1, PX01805, reveals highly confidential personal information about MMO’s patients, such as gender, age, identification numbers, and diagnostic codes for their various inpatient and outpatient treatments. Permanent *in camera* treatment is GRANTED for PX01805, a document that contains sensitive personal information.

In camera treatment, for a period of five years, to expire on June 1, 2016, is GRANTED for the documents listed as Exhibits 2 – 4 to MMO’s motion.

For the information in Exhibit 5 to MMO's motion, the motion for *in camera* treatment is GRANTED IN PART. Because MMO has not made the necessary showing to warrant indefinite *in camera* treatment and because 5 years is the typical time period that *in camera* treatment is provided to information such as this, *in camera* treatment is GRANTED for a period of five years, to expire on June 1, 2016, for the excerpts listed in Exhibit 5.

K.

Mercy Health Partners ("MHP"):

Non-party Mercy Health Partners seeks *in camera* treatment for several documents and deposition excerpts that Complaint Counsel and Respondent have designated for possible introduction into evidence. MHP supports its motion with a declaration from its Senior Vice President and General Counsel.

MHP seeks *in camera* treatment for documents that it describes as falling into four categories: 1) clinical/financial data about hospital operations; 2) documents reflecting MHP's internal business analyses and strategic planning objectives; 3) MHP's contracts with third-party payors; and, 4) excerpts of deposition testimony by an MHP senior executive regarding categories 1 – 3 as well as other confidential and competitively sensitive MHP information. For these categories of documents, MHP seeks *in camera* treatment for a period of five years. In addition, MHP seeks permanent *in camera* treatment for PX01813. MHP states that PX01813 reveals highly confidential personal information about MHP's patients, such as their gender, age, identification numbers, and diagnostic codes for their various inpatient and outpatient treatments.

The declaration provided by MHP in support of its motion describes in detail the extensive measures that MHP has taken to preserve the confidentiality of the information. MHP also details the serious competitive harm it would suffer if these documents were publicly disclosed. With respect to deposition transcripts, MHP has tailored its requests to certain excerpts reflecting confidential information. Accordingly, MHP has met its burden of demonstrating that the documents for which it seeks *in camera* treatment should be accorded such protection.

In camera treatment, for a period of five years, to expire on June 1, 2016, is GRANTED for the documents listed as Exhibits 1 – 4 to MHP's motion.

Permanent *in camera* treatment is GRANTED for PX01813, a document that contains sensitive personal information.

L.

Michigan Health & Hospital Association Service Corporation ("MHASC"):

Non-party Michigan Health & Hospital Association Service Corporation seeks *in camera* treatment for two electronic databases comprising Complaint Counsel's exhibit PX01809.

MHASC states that several data fields contain individually identifiable health information. By Order dated May 25, 2011, Complaint Counsel's Motion for *In Camera* Treatment was granted, providing permanent *in camera* treatment for 14 electronic data files containing sensitive personal information, including PX01809.

Permanent *in camera* treatment is GRANTED for PX01809, a document that contains sensitive personal information.

M.

Ohio Hospital Association ("OHA"):

Non-party Ohio Hospital Association seeks *in camera* treatment for its database comprising Complaint Counsel's exhibit PX01810. OHA states that the data contains sensitive health information such as the patient's unique identifier diagnostic and procedure codes, status upon discharge, and health insurance information. By Order dated May 25, 2011, Complaint Counsel's Motion for *In Camera* Treatment was granted, providing permanent *in camera* treatment for 14 electronic data files containing sensitive personal information, including PX01810.

Permanent *in camera* treatment is GRANTED for PX01810, a document that contains sensitive personal information.

N.

United HealthCare Inc. and United Healthcare of Ohio, Inc. ("United HealthCare"):

Non-parties United HealthCare Inc. and United Healthcare of Ohio, Inc. seek *in camera* treatment for several documents and deposition excerpts that Complaint Counsel and Respondent have designated for possible introduction into evidence. United HealthCare supports its motion with a declaration from its Senior Network Manager.

United HealthCare seeks *in camera* treatment for documents that it describes as: 1) contracts or portions of contracts that United HealthCare has reached with providers in the Toledo area, containing fee schedules and rates; 2) e-mails created in the course of recent contract negotiations, revealing negotiating strategy, rates, and other contract terms; 3) information obtained through United HealthCare's proprietary hospital comparison program, including detailed quality and cost information; 4) documents that United HealthCare used in its recent contract negotiations, including information on costs, revenues and margins; 5) a presentation which summarizes United HealthCare's competitive position; 6) collections of data regarding claims submitted by United HealthCare's members; and 7) excerpts from an investigational hearing transcript and a deposition transcript of one of its employees discussing confidential business or employment information.

The declaration provided by United HealthCare in support of its motion describes the measures that United HealthCare has taken to guard the secrecy of the information and details the competitive harm it would suffer if these documents were publicly disclosed. With respect to Exhibits 45 and 46 to the motion, United HealthCare seeks *in camera* treatment for selected excerpts containing confidential information from the investigational hearing transcript and deposition transcript of one of United HealthCare's employees. Accordingly, with the exception of the exhibits addressed immediately below, United HealthCare has met its burden of demonstrating that the documents for which it seeks *in camera* treatment should be accorded such protection.

With respect to Exhibits 22 – 26, United HealthCare states that the information is not publicly available, but is revealed to United HealthCare's members. With respect to Exhibit 42, United HealthCare describes the document as a presentation and has not demonstrated that the information has not been widely dispersed within the company. United HealthCare has not demonstrated that Exhibits 22 – 26 and 42 merit *in camera* treatment. Therefore, United HealthCare's motion is DENIED as to these documents.

With respect to documents listed in United HealthCare's motion as Exhibits 1-21, 27-41, 45-47, *in camera* treatment is GRANTED for a period of five years, to expire on June 1, 2016.

With respect to the documents listed in United HealthCare's motion as Exhibit 44, PX01816, and Exhibit 43, related data, permanent *in camera* treatment is GRANTED on the grounds that they contain sensitive personal information. See May 25, 2011 Order Granting Complaint Counsel's Unopposed Motion for *In Camera* Treatment.

O.

University of Toledo Medical Center ("UTMC"):

Non-party University of Toledo Medical Center seeks *in camera* treatment for several documents that Complaint Counsel and Respondent have designated for possible introduction into evidence. UTMC supports its motion with an affidavit from its Chancellor and Executive Vice President for Biosciences and Health Affairs.

UTMC seeks *in camera* treatment for documents that it states contain information regarding managed care rates, proposals and terms, and payor mix information. In addition, UTMC seeks *in camera* treatment for PX01814, which UTMC states contains highly sensitive patient data which may include individually identifiable health information. UTMC does not specify the time period for which it seeks *in camera* treatment for its documents.²

² Because *in camera* protection is typically provided for a period of five years in cases involving confidential documents concerning healthcare-related information and because other non-parties asked for and were granted *in camera* protection for a period of five years, *in camera* treatment will be provided for a period of five years for those documents listed in Exhibit A. In addition, because Rule 3.45 states that permanent *in camera* treatment shall be accorded to sensitive personal information, permanent *in camera* treatment is granted for PX01814.

UTMC explains that the documents for which UTMC seeks *in camera* treatment contain highly competitive or highly sensitive information that is kept in strict confidence, the disclosure of which would likely cause UTMC serious harm. The affidavit provided by UTMC in support of its motion describes how UTMC carefully guards this information and discloses it only to those employees with a proper purpose and with proper authority to access such information. Accordingly, UTMC has met its burden of demonstrating that the documents for which it seeks *in camera* treatment should be accorded such protection.

In camera treatment, for a period of five years, to expire on June 1, 2016, is GRANTED for the documents listed at Exhibit A to UTMC's motion.

Permanent *in camera* treatment is GRANTED for PX01814, a document that contains sensitive personal information.

P.

WellPoint, Inc. ("WellPoint"):

Non-party WellPoint, Inc. seeks *in camera* treatment for certain documents and excerpts of testimony that Complaint Counsel and Respondent have designated for possible introduction into evidence. WellPoint supports its motion with a declaration from its Regional Vice President of Contracting and Provider Relations for Anthem Blue Cross and Blue Shield in northern Ohio.

WellPoint seeks *in camera* treatment for documents in the following categories: 1) current agreements with its network hospitals in the Toledo market; 2) other agreements with Toledo area hospitals, including renewal amendments and compensation schedules and key internal documents, which set forth business plans and negotiation strategies; 3) an electronic file that contains confidential and sensitive personal information regarding thousands of patients; 4) a declaration containing highly sensitive and confidential information about its commercial business in the Toledo area and its current hospital agreements; and, 5) excerpts of deposition testimony from one employee addressing commercially sensitive topics. WellPoint seeks *in camera* treatment for an indefinite period of time.

The declaration provided by WellPoint describes the importance of protecting the documents for which it seeks *in camera* treatment and details the competitive harm it would suffer if these documents were publicly disclosed. WellPoint also describes in detail the measures that have been taken to guard the secrecy of the information. With respect to the deposition testimony, WellPoint seeks *in camera* treatment for selected excerpts containing confidential information. Accordingly, WellPoint has met its burden of demonstrating that the documents for which it seeks *in camera* treatment should be accorded such protection. However, with the exception of PX01801, WellPoint has not met its burden of demonstrating that indefinite *in camera* treatment is necessary.

Permanent *in camera* treatment is GRANTED for the database identified as PX01801, a document that contains sensitive personal information.

For all other documents listed in WellPoint's motion, the motion for *in camera* treatment is GRANTED IN PART. Because WellPoint has not made the necessary showing to warrant indefinite *in camera* treatment and because 5 years is the typical time period that *in camera* treatment is provided for documents such as these, *in camera* treatment is GRANTED for a period of five years, to expire on June 1, 2016, for the documents listed in Appendices 1, 2, 4, and 5 to WellPoint's Motion.

Q.

Wood County Hospital ("WCH"):

Non-party Wood County Hospital seeks *in camera* treatment for "the underlying data supporting Exhibit PX01816." WCH describes the underlying data as including revenue summaries, revenue details, comparative statements, estimates for contractals, and inpatient financial data. WCH supports its motion with the declaration of its President. WCH seeks *in camera* treatment for a period of three years.

It is unclear from WCH's motion whether the "underlying data supporting Exhibit PX01816" constitutes proposed trial exhibits separate and distinct from PX01816. By Order dated May 25, 2011, Complaint Counsel's Motion for *In Camera* Treatment was granted, providing permanent *in camera* treatment for 14 electronic data files containing sensitive personal information, including PX01816. Permanent *in camera* treatment is GRANTED for PX01816, a document that contains sensitive personal information.

To the extent that WCH seeks *in camera* treatment for documents other than PX01816, WCH may file a renewed motion for *in camera* treatment specifically identifying such documents.

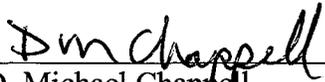
IV.

Because *in camera* treatment is appropriate only for information that is offered into evidence and because the trial exhibit numbers were not readily apparent in many of the non-parties' motions, the parties are hereby ORDERED to prepare a joint proposed order, with a signature line for the Administrative Law Judge, that lists by exhibit numbers of the documents that, by this Order, have been granted *in camera* treatment and that sets forth the expiration date of *in camera* treatment for each exhibit.

Each non-party that has documents or information that has been granted *in camera* treatment by this Order shall inform its testifying current or former employees that *in camera* treatment has been provided for the material described in this Order. At the time that any documents that have been granted *in camera* treatment are offered into evidence or before any of the information contained therein is referred to in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session.

In instances where a non-party's request was denied without prejudice, that non-party shall have until May 31, 2011 to file a renewed motion for *in camera* treatment. The parties shall then have until June 3, 2011 to file any opposition to such renewed motions.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: May 25, 2011