

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 RESPONDENT'S RENEWED MOTION  
FOR *IN CAMERA* TREATMENT**

**I.**

Pursuant to the May 13, 2011 Order on Respondent's Motion for *In Camera* Treatment and Rule 3.45(b) of the Commission's Rules of Practice, on May 18, 2011, Respondent filed a Renewed Motion for *In Camera* Treatment ("Renewed Motion"). Complaint Counsel filed a Response on May 23, 2011. As set forth below, the Renewed Motion is GRANTED.

**II.**

Respondent previously filed a motion seeking *in camera* treatment for 964 documents. Complaint Counsel filed an opposition to the original motion, objecting that some documents for which Respondent sought *in camera* treatment had already been publicly disclosed or contained no discernable competitively sensitive information. By Order dated May 13, 2011, Respondent's motion for *in camera* treatment was denied without prejudice because the scope of Respondent's motion far exceeded the protections contemplated by Rule 3.45. The May 13, 2011 Order also set forth the standards by which motions for *in camera* treatment are evaluated and directed Respondent to review its requests and to submit a renewed motion for *in camera* treatment for only those documents that meet those standards.

Respondent's renewed motion seeks *in camera* treatment for approximately 667 documents. In support of its renewed motion, Respondent provides declarations from the Chief Financial Officer and Strategic Planning and Business Development Officer for ProMedica Health System, Inc. and from the Chief Financial Officer and Chief Operating Officer for St. Luke's Hospital. In these declarations, Respondent describes each of the documents for which it seeks *in camera* treatment and provides a justification for why *in camera* treatment is warranted for each document it seeks to have withheld from the

public record. Respondent explains that the public disclosure of the materials for which it seeks *in camera* treatment would cause a clearly defined, serious competitive injury to Respondent and to St. Luke's and also to the non-party commercial health plans with which the hospitals negotiate.

Complaint Counsel objects to *in camera* treatment for 119 of these documents that it states fall into four categories: 1) documents older than three years; 2) documents relating to efficiencies arguments; 3) documents pertaining to quality issues; and 4) documents reflecting St. Luke's analysis of potential partners other than ProMedica.

### III.


As stated in the May 13, 2011 Order, there is a presumption that *in camera* treatment will not be accorded to information that is more than three years old. May 13 2011 Order (citing *Conference Interpreters*, 1996 FTC LEXIS 298, at \*15). Respondent has explained that these documents reflect ProMedica's and St. Luke's business strategies and can impact future negotiations with commercial health plans. Respondent has shown that the information for which it seeks *in camera* treatment remains relevant and significant today and thus has overcome this presumption. With respect to all of the documents challenged by Complaint Counsel, Respondent has shown that: 1) the information in these materials is not known to the public or generally outside ProMedica or St. Luke's; 2) the internal materials reflect the strategic decision-making of senior executives from ProMedica and St. Luke's; 3) ProMedica and St. Luke's have carefully guarded the secrecy of these materials; 4) competitor hospitals would benefit significantly from gaining access to these materials; 5) ProMedica and St. Luke's expended significant money in developing some of these materials; and 6) it would be difficult for another party to replicate the information found in these materials. In addition, Respondent has shown that the documents for which it seeks *in camera* treatment are confidential, competitively sensitive documents, the disclosure of which would likely result in competitive harm to Respondent. With respect to deposition transcripts for which *in camera* protection is sought, Respondent has narrowed its request to specific excerpts reflecting confidential information. Accordingly, Respondent has met its burden in support of its request for *in camera* treatment.

Respondent seeks indefinite *in camera* treatment for documents that it lists in the category of patient data. Pursuant to Commission Rule 3.45(b), patient data is considered "sensitive personal information," and "shall be accorded permanent *in camera* treatment unless disclosure or an expiration date is required or provided by law." 16 C.F.R. § 3.45(b). Respondent seeks *in camera* treatment for a period of three years for documents it lists in the following categories – business records, commercial health plan contracts, commercial health plan negotiations, defensive strategy documents, and deposition testimony. Where *in camera* treatment is granted for business records, it is typically provided for two to five years. May 13, 2011 Order (citing *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)).

IV.

Respondent's Renewed Motion is GRANTED. For documents listed in Table 1 to Respondent's Renewed Motion in the "*in camera* category" as "patient data," permanent *in camera* treatment is granted. For all other documents listed in Table 1 to Respondent's Renewed Motion, *in camera* treatment is granted for a period of three years, to expire on June 1, 2014. Respondent is hereby directed to prepare a proposed order that lists by exhibit number 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.

ORDERED:

  
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D. Michael Chappell  
Chief Administrative Law Judge

Date: May 25, 2011