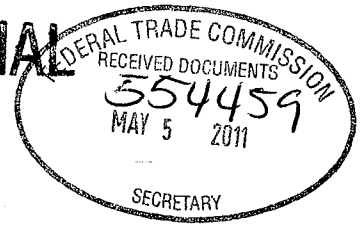


ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

)	
In the Matter of)	
PROMEDICA HEALTH SYSTEM, INC.,)	DOCKET NO: 9346
)	
Respondent.)	Chief Administrative Law D. Michael Chappell
)	

[PUBLIC]
MOTION OF THIRD-PARTY MICHIGAN HEALTH & HOSPITAL ASSOCIATION
SERVICE CORPORATION FOR *IN CAMERA* TREATMENT OF RECORDS

Pursuant to 16 C.F.R. § 3.45(b), Michigan Health & Hospital Association Service Corporation (MHASC) hereby moves for permanent *in camera* treatment of two electronic data bases (Complaint Counsel Exhibit No. PX01809) provided to Complaint Counsel on encrypted compact discs by MHASC in response to a third-party subpoena in this matter. The data on these two compact discs includes data fields requested by Complaint Counsel that contain Protected Health Information (PHI) as defined by the Privacy Rule within the Health Insurance Portability and Accountability Act of 1996 (HIPAA) at 45 C.F.R. parts 160 and 164.

I. Description of Protected Health Information

Several data fields included on the discs contain *individually identifiable health information* as that term is defined in the HIPAA Privacy Rule at 45 C.F.R. § 160.103. Specifically, the discs contain data fields that include patients' five digit ZIP codes and individual patient dates of admission and discharge, which are protected under the Privacy Rule.

II. Legal Duty to Protect Individually Identifiable Health Information

MHASC is considered a *Business Associate* under the HIPAA Privacy Rule because it collects data from member hospitals in Michigan that contains individually identifiable patient

health information. Hospitals are considered *Covered Entities* under the Privacy Rule and both *Business Associates* and *Covered Entities* have a duty not to disclose identifiable patient information without an individual patient's consent. At 45 C.F.R. § 164.512 (a) and (f), the Privacy Rule outlines the permissible disclosures of PHI without obtaining an individual patient's consent. 45 C.F.R. § 164.512 (a) (1) states that "A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law." 45 C.F.R. § 164.512 (f) (1)(ii)(C) further states that a covered entity may disclose protected health information in compliance with and as limited by the relevant requirements of "(a)n administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that: (1) The information sought is relevant and material to a legitimate law enforcement inquiry; (2) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) De-identified information could not reasonably be used."

Complaint Counsel issued a Civil Investigative Demand (No. 101-0167) in October of 2010 and a Subpoena *Duces Tecum* on February 28, 2011 to MHASC requesting data containing protected health information. Prior to responding to the Civil Investigative Demand MHASC notified Complaint Counsel that the requested information included PHI that was subject to the HIPAA Privacy Rule and asked Complaint Counsel to affirm in writing that this information was relevant and material to their investigation and as limited in scope as necessary for their needs. MHASC further requested that Complaint Counsel affirm that de-identified information could not reasonably be used for their purpose. Such written affirmation was provided to MHASC in a

letter dated October 12, 2010 sent via electronic mail and signed by Michelle M. Yost and approved Matthew Reilly for Complaint Counsel.

In its responses to the CID and Subpoena *Duces Tecum* MHASC stated that the enclosed compact discs contained protected health information under the HIPAA Privacy Rule and, consistent with the Rule, provided the discs in an encrypted format.

III. Request for permanent *In Camera* status

MHASC took appropriate action to comply with its obligations under the HIPAA Privacy Rule in its handling of protected health information submitted to Complaint Counsel in this matter. Complaint Counsel stated that its request for this data from MHASC met the criteria for appropriate disclosure under the Privacy Rule. In order to continue to protect individually identifiable health information contained in Exhibit No. PX01809 MHA respectfully requests that this data be granted permanent *In Camera* status pursuant to 16 C.F.R. §§ 3.45, 4.10 (g).

DATED: May 4, 2011

Respectfully submitted,

By: 

Amy J. Barkholz, Michigan P51443

General Counsel

Michigan Health & Hospital Association

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CERTIFICATE OF SERVICE

I declare as follows:

I certify that on May 4, 2011, I caused an original and two copies of the **Motion of Third-Party Michigan Health & Hospital Association Service Corporation, for permanent *In Camera* Treatment of data containing protected health information** to be filed with the Secretary of the Commission by United Parcel Service overnight delivery.

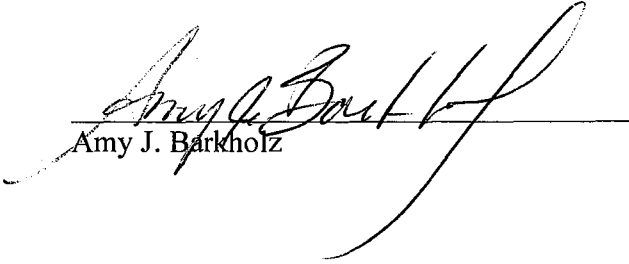
I also certify that on this same date, I caused one copy of the foregoing motion to be served by electronic submission upon:

Jeanne Liu
Attorney, Bureau of Competition
U.S. Federal Trade Commission
601 New Jersey Ave, NW
Washington, D.C. 20001
jliu@ftc.gov

David Marx, Jr.
McDermott Will & Emery LLP
227 W. Monroe Street
Suite 4400
Chicago, IL 60606
dmarx@mwe.com

I also certify that I caused one copy of the foregoing document to be delivered by United Parcel Service overnight delivery and via facsimile to:

Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, H-106
Washington, DC 20580
Facsimile: (202) 326-2427



Amy J. Barkholz