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JOHN J. McHUGH, III
email: mchugh@mchughlaw.com



May 5, 2011

Office of the Secretary
Federal Trade Commission
Room H-113
600 Pennsylvania Avenue, NW
Washington, DC 20580

VIA FEDERAL EXPRESS

Re: In the Matter of ProMedica Health System, Inc.; Docket No. 9346

Gentlemen:

I enclose for filing in connection with the captioned matter our Notice of Appearance on behalf of FrontPath Health Coalition. I also enclose for filing Non-Party FrontPath Health Coalition's Motion for *In Camera* Treatment of Proposed Evidence, to which is attached a proposed Order and the Declaration of Susan E. Szymanski.

Thank you for your assistance in this regard. Should you have any questions, please do not hesitate to call.

Very truly yours,

John J. McHugh, III

JJM:rlm
encs.
3661-005

cc: Jeanne Liu (with enc.)
Christine G. Devlin (with enc.)

FrontPath-FTC Prod00005406.

On May 5, 2011, Front Path Health Coalition learned that Respondent's Counsel had also indicated that it intends to offer three Front Path documents furnished to UTMC as additional exhibits in the administrative hearing. The notice is attached hereto as Motion Exhibit C. As indicated in the electronic correspondence attached, the documents were subpoenaed by Respondent's Counsel for use in this administrative proceeding. They are identified as follows:

UTMC 560754

UTMC 560758

UTMC 560768

The information contained in the six documents is competitively sensitive and held in strict confidence by FrontPath Health Coalition. Public disclosure of these documents would cause direct serious harm to FrontPath's competitive position, by reason of which it moves, pursuant to 16 C.F.R. §3.45(b), for *in camera* treatment and management of those documents. FrontPath's motion is supported by the Declaration of Susan Szymanski attached hereto as Motion Exhibit D.

Under 16 C.F.R. §3.45(b), request for *in camera* treatment must show that public disclosure of the document in question "will result in the clearly defined serious injury to the person or corporation whose records are involved." H.P. Hood & Sons, Inc., 58 FTC 1184, 1188 (1961). That showing can be made by establishing that the documents in question are "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury." In Re General Foods Corp., 95 FTC 352, 355 (1980).

As demonstrated in the Szymanski declaration, FrontPath has taken significant steps to protect the confidential nature of these documents, which were produced only in response to the civil investigative demand issued by the Federal Trade Commission on August 18, 2010.

FrontPath, in its ordinary business activity, has taken substantial measures to prevent the inadvertent disclosure of the information contained in the six exhibits identified, limiting its

dissemination and taking all appropriate steps to protect its confidentiality. Given the sensitive information, it would be extremely difficult, if not impossible, for FrontPath's competitors or outside persons properly to access or re-create the information in the documents at issue.

PX01803 comprises the medical claims data marshaled for all FrontPath Health Coalition members by MedAssets formerly known as ClaimShop, for the period from January 1, 2007 through March 31, 2011. RX215-000001-22 is Front Path's contract with the Mercy Healthcare System, Promedica's principal competitor in Northwestern Ohio, together with pricing and pricing mechanisms through June 30, 2012. FrontPath-FTC Prod00005406 in its three pages of spreadsheet analysis illustrates FrontPath's method of calculating pricing for both primary and tertiary care hospitals in Northwest Ohio for the years 2008-2009. Together with the information contained in RX215-000001-22, it discloses the prices and pricing for hospital providers to one of FrontPath's critical providers.

UTMC-560754, UTMC 560758, and UTMC 560768 are the current FrontPath pricing proposals for the University of Toledo Medical Center, the only academic medical center in Northwestern Ohio, and a key competitor of Promedica in this area.

The information contained in the exhibits provides unrivaled insight into FrontPath's business and strategic planning, and its prices and pricing strategies with its competitors in the marketplace. If this information were to be made public, not only would FrontPath's competitors have unrivaled access to its proprietary and confidential information, but its service providers would be aware of the prices which are negotiated with their own competitors. This would result in serious competitive harm, not only to FrontPath, but to all members of the Coalition and their beneficiaries in maintaining fair and reasonable access to healthcare services in Northwest Ohio.

FrontPath suggests that it deserves special consideration as a non-party requesting *in camera* treatment for this information. In the matter of Kaiser Aluminum & Chemical Corporation, 103 FTC 500 (1984). Reasonable periods of *in camera* treatment encourage non-parties to cooperate with future discovery requests in adjudicative proceedings, as FrontPath has done in this case.

Conversely, disclosing such documents obtained by compulsory process would require third parties aggressively to resist such discovery, and it is unclear, in this instance, how disclosure would materially promote the resolution of this matter, or increase measurably public understanding of these proceedings. In re Bristol-Myers, 90 FTC 455, 456 (1977).

The personal information contained in the medical claims data designated as Commission Exhibit PX01803 warrants permanent protection. The contract information warrants lasting protection, since it is vital to FrontPath's competitive position and business strategy. Accordingly, *in camera* protection for a period of not less than five (5) years is respectfully requested.

FrontPath Health Coalition accordingly moves under Rule 3.45 for such *in camera* designation of the described material in these proceedings.

Respectfully submitted,

Dated: May 5, 2011


John J. McHugh, III
McHugh & McCarthy, Ltd.
5580 Monroe Street
Sylvania, OH 43560-2538
Telephone: 419-885-3597
Fax: 419-885-3861
email: mchugh@mchughlaw.com
Attorney for Non-Party FrontPath
Health Coalition

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and accompanying Proposed Order was duly served by Federal Express and electronically this 5th day of May, 2011, upon:

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room H-106
600 Pennsylvania Avenue, NW
Washington, DC 20580
oalj@ftc.gov

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

Jeanne Liu
Complaint Counsel
Federal Trade Commission
601 New Jersey Ave, NW
Washington, DC 20580
jliu@ftc.gov

Christine G. Devlin
Respondent's Counsel
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
cdevlin@mwe.com


Attorney for FrontPath Health Coalition



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV

April 28, 2011

VIA ELECTRONIC MAIL

John J. McHugh, III, Esq.
McHugh & McCarthy, Ltd.
5580 Monroe Street
Sylvania, OH 43560

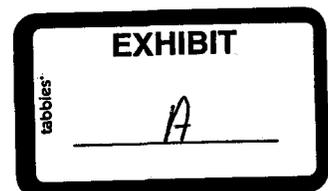
RE: *In the Matter of ProMedica Health System, Inc.*, Federal Trade Commission
Docket No. 9346

Dear John:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intend to offer the data and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the testimony is enclosed. The administrative trial is scheduled to begin on May 31, 2011. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge D. Michael Chappell.

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45, 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment. For example, judges have granted *in camera* motions after a non-party to the proceeding demonstrated that public disclosure of commercially sensitive information would expose it to a serious competitive disadvantage; that it has taken and continues to take measures to guard the secrecy of the information; and that the documents are not widely disseminated.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov.



22, 2000); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). For your convenience, we have collected an example of a third-party motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed and granted in a recent FTC administrative proceeding; this is included as an attachment to this letter.

Please be aware that under the current Scheduling Order dated February 7, 2011, the deadline for filing motions seeking *in camera* status is May 5, 2011.

If you have any questions, please contact me at 202-326-3572 or at jliu@ftc.gov. Thank you.

Regards,



Jeanne Liu

Enclosures

Attachment A

**In the Matter of PROMEDICA HEALTH SYSTEM, INC., Docket No. 9346
List of FrontPath/MedAssets Documents Marked As Exhibits by Complaint Counsel**

Exhibit No.	Beg. Dates	End Dates	Date	Description
PX01803	n/a	n/a	01/01/2007- 03/31/2011	FrontPath/MedAssets Data
PX02065	n/a	n/a	10/11/2010	Signed Declaration of Susan Szymanski (FrontPath)

McDermott Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami
Milan Munich New York Orange County Rome Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Christine G. Devlin
Associate
cdevlin@mwe.com
+1 202 756 8667

April 28, 2011

VIA E-MAIL AND U.S. MAIL

John J. McHugh, III
McHugh & McCarthy, Ltd.
5580 Monroe Street
Sylvania, OH 43560

Re: In the Matter of ProMedica Health System, Inc., Docket 9346

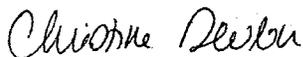
Dear Mr. McHugh:

I write on behalf of ProMedica Health System, Inc. to provide notice to your client, FrontPath, of ProMedica's intent to offer your client's materials as evidence at the hearing in the above-mentioned matter, pursuant to 16 C.F.R. §3.45(b) and the Scheduling Order issued by Judge Chappell on February 7, 2011. Attached to this letter is a list of documents that your client submitted in response to Civil Investigative Demands and Subpoenas *Duces Tecum* issued by Complaint Counsel and Respondent Counsel in this matter and which ProMedica intends to introduce as evidence at the hearing scheduled to commence on May 31, 2011.

I will be contacting you next week in regards to authentication of these documents.

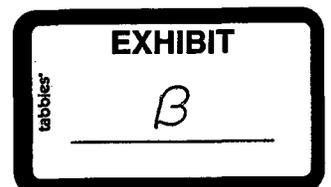
Please do not hesitate to contact me at 202-756-8667 if you have any questions.

Sincerely,



Christine G. Devlin

DM_US 28161321-11.049344.0010



Appendix: FrontPath

FRONTPATH-FTCProd0000419, FRONTPATH-FTCProd00005406, FRONTPATH-FTCProd00000419

Roxanne L. Mockensturm

From: Roxanne L. Mockensturm on behalf of John J. McHugh III
Sent: Thursday, May 05, 2011 4:33 PM
To: Roxanne L. Mockensturm
Subject: FW: In the Matter of ProMedica Health System
Attachments: UTM-560754.pdf; UTM-560758.pdf; UTM-560768.pdf

Importance: High

-----Original Message-----

From: Cooper, Lauri [mailto:Lauri.Cooper@utoledo.edu]
Sent: Thursday, May 05, 2011 2:10 PM
To: Barb Sandusky; Susan Szymanski
Cc: Westfall, Anthony J; Papadimos, Peter J.
Subject: FW: In the Matter of ProMedica Health System

Barb and Sue: This email is to serve as official notice that UT was required by compulsory process to provide all payor related information. The attached was provided as part of that compulsory process and was provided to the parties involved under a protective order. We have been advised that this information will be presented in a public hearing and not subject to a protective order or in camera review unless requested by an interested party. The University will request that protection directly from the parties (PHS and FTC) but will not be filling a motion to prevent its use, for modification of the existing protective order(s) or for in camera inspection only.

Please let me know if you have any questions.

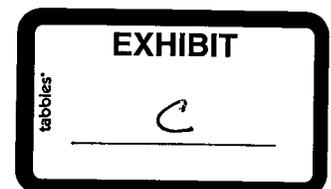
Lauri Cooper
Senior Legal Counsel
Associate Vice President
Health Science Campus
The University of Toledo
3000 Arlington
Toledo, Ohio 43614
(419) 383-4577
F (419) 383-3896
lauri.cooper@utoledo.edu

-----Original Message-----

From: Devlin, Christine Garrett [mailto:Cdevlin@mwe.com]
Sent: Friday, April 29, 2011 11:56 AM
To: Cooper, Lauri
Subject: RE: In the Matter of ProMedica Health System

Part 3 of 4.

Christine Garrett Devlin
McDermott Will & Emery LLP
600 13th Street, N.W. | Washington, DC 20005-3096



Telephone: 202.756.8667 | Facsimile: 202.478.2768 cdevlin@mwe.com

-----Original Message-----

From: Cooper, Lauri [mailto:Lauri.Cooper@utoledo.edu]
Sent: Friday, April 29, 2011 8:53 AM
To: Devlin, Christine Garrett
Cc: Rodriguez, Bethany
Subject: RE: In the Matter of ProMedica Health System

Thank you in advance. Lauri

-----Original Message-----

From: Devlin, Christine Garrett [mailto:Cdevlin@mwe.com]
Sent: Friday, April 29, 2011 8:52 AM
To: Cooper, Lauri
Cc: Rodriguez, Bethany
Subject: Re: In the Matter of ProMedica Health System

Yes, I will do so later this morning or early afternoon once all our proposed exhibits are organized electronically.

Christy Devlin

On Apr 29, 2011, at 8:18 AM, "Cooper, Lauri" <Lauri.Cooper@utoledo.edu> wrote:

> Christy:

> Would you be able to provide copies of those documents you intend to produce in pdf format to me via email? Thanks

>

> Lauri Cooper

> Senior Legal Counsel

> Associate Vice President

> Health Science Campus

> The University of Toledo

> 3000 Arlington

> Toledo, Ohio 43614

> (419) 383-4577

> F (419) 383-3896

> lauri.cooper@utoledo.edu

>

>

>

>

>

> -----Original Message-----

> From: Albers, Matthew E. [mailto:mealbers@vorys.com]

> Sent: Thursday, April 28, 2011 7:48 PM

> To: Cooper, Lauri

> Cc: Rubin, Kenneth J.

> Subject: FW: In the Matter of ProMedica Health System

>

> Lauri - FYI

>
>
>

> Sent with Good (www.good.com)

> -----Original Message-----

> From: Devlin, Christine Garrett [mailto:Cdevlin@mwe.com]
> Sent: Thursday, April 28, 2011 07:09 PM Eastern Standard Time
> To: Rubin, Kenneth J.; Albers, Matthew E.
> Subject: In the Matter of ProMedica Health System

> Ken and Matt,

> Please see the attached notice.

> Thank you,

> Christy

> Christine Garrett Devlin
> McDermott Will & Emery LLP
> 600 13th Street, N.W. | Washington, DC 20005-3096
> Telephone: 202.756.8667 | Facsimile: 202.478.2768

> cdevlin@mwe.com <mailto:cdevlin@mwe.com>

> *****
> *****

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> Please visit <http://www.mwe.com/> for more information about our Firm.

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>
> From the law offices of Vorys, Sater, Seymour and Pease LLP.

>
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> cannot be used, by any taxpayer for the purpose of (i) avoiding
> penalties
> that may be imposed under the U.S. Internal Revenue Code or
> (ii) promoting, marketing, or recommending to another person, any
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> _____

>
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> message. If you are the intended recipient but do not wish to receive
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> immediately.
> <Kenneth Rubin.pdf>

As a result, any discounts or rate increases that result from FrontPath's negotiations with healthcare providers flow directly and fully to our plan sponsors.

4. FrontPath's primary service area is northwestern Ohio, but our provider network also covers parts of southeastern Michigan and northeastern Indiana, because some of our members reside in or near these areas. For our purposes, northwestern Ohio constitutes the area west of Huron County, Ohio, and north of Allen County, Ohio. The bulk of our membership is located in Lucas County, Ohio, and in the immediately surrounding locales. FrontPath has approximately 80,000 covered lives in this area, and a total of about 125,000 covered lives.

5. FrontPath's primary competitors are Medical Mutual of Ohio ("MMO"), Anthem Blue Cross and Blue Shield ("Anthem"), Paramount Health Care ("Paramount"), and Aetna, Inc. In the self-insured market in our service area, FrontPath has the second-largest membership, trailing MMO. Anthem and Paramount are roughly tied for third place.

6. The hospitals/systems in Lucas County are ProMedica Health System ("ProMedica"), Mercy Health Partners ("Mercy"), and the University of Toledo Medical Center ("UTMC"). ProMedica has operated three general acute care hospitals in Lucas County for several years. These are The Toledo Hospital (located on the same campus as Toledo Children's Hospital), Flower Hospital, and Bay Park Community Hospital. In September 2010, ProMedica acquired St. Luke's Hospital ("St. Luke's"), which operated as an independent facility before the acquisition. Mercy operates three general acute care hospitals in Lucas County: Mercy St. Vincent Medical Center (located on the same campus as Mercy Children's Hospital), Mercy St. Anne Hospital, and Mercy St. Charles Hospital. UTMC is an independent academic hospital, operated by the University of Toledo.

7. FrontPath has all of Lucas County's hospitals/systems in its provider network. In other words, FrontPath has negotiated reimbursement contracts with each of these hospitals/systems. All of our hospital contracts are structured as fixed-rate, prospective-payment arrangements, similar to those used by the Centers for Medicare and Medicaid Services. Under these

contracts, FrontPath's plan sponsors pay a pre-negotiated flat reimbursement rate for each diagnosis-related group classification, regardless of the services performed for the treatment of the diagnosed condition. All of our contracts contain an inflation factor, which periodically adjusts the reimbursement rates according to changes in a medical consumer price index. Thus, our contract negotiations with hospitals largely focus on bargaining over the relevant reimbursement rates and the inflation factor.

8. Each negotiation between FrontPath and a particular hospital/system is a complex back-and-forth process, during which we address a number of relevant factors. In each case, however, the resulting reimbursement rates are determined largely by the amount of bargaining leverage that FrontPath and the negotiating hospital/system have relative to each other. The higher FrontPath's relative bargaining leverage, the lower the reimbursement rates that we will be able to obtain for our plan sponsors. Conversely, the greater the hospital's relative bargaining leverage, the higher the prices and the less favorable the contract terms it will be able to demand from FrontPath. In other words, increases in FrontPath's bargaining leverage put downward pressure on our plan sponsors' healthcare costs, while increases in a hospital's/system's bargaining leverage generally cause rates to increase.

9. FrontPath's relative bargaining leverage with a given hospital/system is based on the amount of patient volume that FrontPath can offer the hospital/system. This, in turn, depends on size of FrontPath's membership in the hospital's service area. The more patients that a hospital is likely to gain or to retain by participating in FrontPath's network, the more motivated the hospital will be to reach an agreement with FrontPath, and the lower the rates that it will be willing to offer our plan sponsors.

10. FrontPath Health Coalition, (in its operations as a managed care company) operates a Preferred Provider Organization, in which it negotiates discounted reimbursement rates with area health care providers on behalf of its membership. Accordingly, the reimbursement terms

and the re-pricing methodologies are the key tangibles (work products) of the FrontPath organization and whereby the organization derives its economic value.

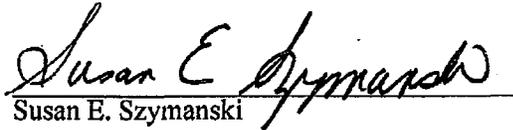
11. The six documents proposed to be offered as exhibits are confidential and proprietary records of FrontPath. The claims data contains all claims information, including patient personal health information, services, and pricing for the time period from January 1, 2007 through March 30, 2011. Access to such a data base would enable any competitor of FrontPath to determine its prices and its pricing practices, and would inevitably result in the disclosure of patient health information. The remaining exhibits establish the prices and pricing mechanisms that FrontPath utilizes with ProMedica's principal competitor hospitals. Access to such information would afford ProMedica an unsurpassed advantage in negotiating reimbursement rates, as it would know what agreements FrontPath has reached with ProMedica's hospital competitors.

12. The proposed contractual exhibits (other than the claims data) represent the FrontPath PPO network's contracted reimbursement rates for the major participating hospitals and health systems operating in FrontPath's key service area. These contracted reimbursement rates are the most vital and confidential information of FrontPath's line of business as a Preferred Provider Organization (PPO) and as such are considered by FrontPath to be the trade secrets of the organization.

13. FrontPath annually expends great financial resources in the time and expenses necessary for the successful negotiation of these reimbursement rates and schedule continuance. Accordingly, FrontPath requires (as is standard practice for managed care organizations) that any external entity who may have access to such protected information, execute strict confidentiality agreements prior to entering the business relationship in which that entity may have access to such information to protect and preserve the integrity of the information. Additionally, all negotiated provider agreements require that all contract information, including but not limited to negotiated rates, be held strictly confidential and be protected by FrontPath.

14. Disclosure of these exhibits to Promedica or publicly would significantly harm FrontPath, by allowing competitors to utilize this information and negotiate agreements to undercut the FrontPath contracts, thus placing FrontPath unfairly at a competitive disadvantage in the marketplace, and exposing FrontPath to litigation for breach of confidentiality and nondisclosure agreements to which it has consented in these provider agreements.

Pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing is true and correct.


Susan E. Szymanski

May 5, 2011

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

In the Matter of)

ProMedica Health System, Inc.,)

a corporation.)

Docket No. 9346

PROPOSED ORDER GRANTING NON-PARTY
FRONTPATH HEALTH COALITION'S MOTION
FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE

On May 5, 2011, non-party FrontPath Health Coalition filed its motion for *in camera* treatment of confidential business information contained in various documents that have been identified by complaint counsel and respondent's counsel as potential trial exhibits. For good cause shown,

IT IS HEREBY ORDERED, that FrontPath Health Coalition's motion is granted. The information set forth in the FrontPath documents as follows will be subjected to *in camera* treatment under CFR §3.45, and will be kept confidential and not placed on the public record permanently:

1. PX01803, FrontPath/Med Assets Data
2. RX215-000001-22 (FrontPath-FTC Prod0000419)
3. FrontPath-FTC Prod00005406.
4. UTMC-560754 Pricing Proposal
5. UTMC 560758 Pricing Proposal
6. UTMC 560768 Pricing Proposal

IT FURTHER ORDERED, that only authorized Federal Trade Commission personnel and court personnel with judicial review may have access to the above-referenced information, provided that I, the Commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of this proceeding.

IT IS SO ORDERED.

Dated: May ____, 2011

D. Michael Chappell
Administrative Law Judge