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

ORIGINA RADE COMMISS 2011 SECRETARY

In the Matter of

ProMedica Health System, Inc., Respondent. DOCKET NO. 9346

ORDER ON RESPONDENT'S SUPPLEMENTAL MOTION FOR IN CAMERA TREATMENT

I.

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice, on June 1, 2011, Respondent filed a Supplemental Motion for *In Camera* Treatment of New Trial Exhibits ("Supplemental Motion"). Complaint Counsel does not oppose the Supplemental Motion. As set forth below, the Supplemental Motion is GRANTED.

II.

By Order dated May 24, 2011, Complaint Counsel's unopposed motion to modify its proposed witness list to substitute a representative of non-party, FrontPath Health Coalition ("FrontPath"), with an equivalent witness was granted. In light of this substitution, Respondent, with Complaint Counsel's consent, supplemented the final joint exhibit list with 12 new documents. Respondent states that it has reviewed these 12 documents and determined that all 12 require *in camera* treatment.

The standards by which Respondent's Supplemental Motion is evaluated are set forth in the May 13, 2011 Order on Respondent's Motion for *In Camera* Treatment. In support of its Supplemental Motion, Respondent provides a declaration from the Chief Financial Officer and Chief Operating Officer for St. Luke's Hospital. In this declaration, 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, to St. Luke's Hospital, which Respondent has acquired ("St. Luke's"), and also to the non-party commercial health plans with which the hospitals negotiate.

With respect to each of the documents, Respondent has shown that: 1) the

information in these materials is not known to the public or generally outside Respondent ProMedica or St. Luke's; 2) the internal materials reflect the strategic decision-making of senior executives from St. Luke's; 3) St. Luke's has carefully guarded the secrecy of these materials; 4) competitor hospitals would benefit significantly from gaining access to these materials; 5) 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. Accordingly, Respondent has met its burden in support of its request for *in camera* treatment.

III.

Respondent's Supplemental Motion is GRANTED. For documents listed in Table 1 to Respondent's Supplemental 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:

D. Michael Chappell

D. Michael Chappell Chief Administrative Law Judge

Date: June 2, 2011