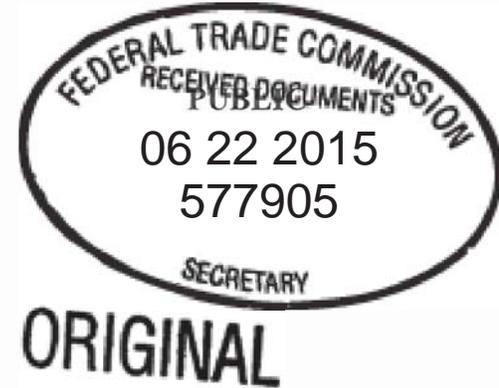


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



_____))
In the Matter of))
))
LabMD, Inc.,))
a corporation,))
Respondent.))
_____)

DOCKET NO. 9357

**ORDER MEMORIALIZING BENCH RULINGS ON ADMISSIBILITY OF EVIDENCE
AND ON RESPONDENT'S MOTIONS FOR *IN CAMERA* TREATMENT**

I.

By Order dated June 1, 2015, the parties were advised that the evidentiary hearing would reconvene to, *inter alia*, admit or exclude all remaining exhibits, and that if either party intended to seek to offer into evidence exhibits which contain information that that party believed merits *in camera* treatment, the offering party was required to file a motion for *in camera* treatment by June 8, 2015. (June 1 Order). The June 1 Order further set a June 10, 2015 deadline for filing oppositions, if any, to motions for *in camera* treatment.

Pursuant to the June 1 Order and Rule 3.45(b) of the Federal Trade Commission's ("FTC") Rules of Practice, Respondent filed two motions: (1) Respondent's Motion to Admit RX 645 *In Camera*; and (2) Respondent's Motion to Admit RX 646, RX 650, RX 652, and RX 657 *In Camera*. In both motions, Respondent seeks: (1) admission of evidence; and (2) an order granting *in camera* treatment to the documents for which Respondent seeks admission. Rulings on Respondent's requests to admit evidence were made at the evidentiary hearing on June 15, 2015.

During trial in this matter, on June 15, 2015, Respondent's Motion to Admit RX 645 was GRANTED. Respondent's Motion to Admit RX 646, RX 650, RX 652, and RX 657 was GRANTED IN PART and DENIED IN PART, and RX 650 and RX 652 were admitted. (Trial transcript, June 15, 2015, pp. 1474-1476). For the reasons set forth below, Respondent's request for *in camera* treatment for RX 645 is GRANTED. Respondent's request for *in camera* treatment for RX 646, RX 650, RX 652, and RX 657 is DENIED.

II.

Respondent requests that permanent *in camera* treatment be granted for RX 645, which, Respondent states, consists of eighteen files produced by Richard Wallace and contains confidential “sensitive personal information” as that term is defined under FTC Rule 3.45(b). Specifically, Respondent states, the documents comprising RX 645 contain sensitive personal information, including information about former LabMD employees, former patients utilizing LabMD’s services, and former LabMD clients, that could harm a member of the public should the information be placed on the public record. Respondent further states that some of the documents comprising RX 645 constitute or contain medical records, describe LabMD laboratory testing for particular patients, include a tax identification number, or discuss a patient’s payment for laboratory testing. Respondent represents that Complaint Counsel has consented to the request for permanent *in camera* treatment for RX 645.

Under Rule 3.45(b) of the Rules of Practice, after finding that material constitutes “sensitive personal information,” the Administrative Law Judge *shall* order that such material be placed *in camera*. 16 C.F.R. § 3.45(b) (emphasis added). “Sensitive personal information” is defined as including, but not 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). “[S]ensitive personal information . . . 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)(3).

In addition to these listed categories of information, in some circumstances, individuals’ names and addresses, and witness telephone numbers have been found to be “sensitive personal information” and accorded *in camera* treatment. *In re LabMD, Inc.*, 2014 FTC LEXIS 127 (May 6, 2014); *In re McWane, Inc.*, 2012 FTC LEXIS 156 (September 17, 2012). *See also In re Basic Research, LLC*, 2006 FTC LEXIS 14, at *5-6 (Jan. 25, 2006) (permitting the redaction of information concerning particular consumers’ names or other personal data where it was not relevant). Because sensitive personal information *shall* be placed *in camera*, the party seeking *in camera* treatment is not held to the same burden of showing that public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment. In addition, the interest of the public in a full and open record is not weighed. 16 C.F.R. § 3.45(b); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015).

Because RX 645 contains “sensitive personal information,” the exhibit shall be given permanent *in camera* treatment.

III.

Respondent next requests that permanent *in camera* treatment be granted for RX 646, RX 650, RX 652, and RX 657. At the hearing on June 15, 2015, Respondent was advised that a preliminary review of the documents revealed that these exhibits do not appear to contain “sensitive personal information,” as defined by Rule 3.45(b). Respondent was further advised that for material other than sensitive personal information, documents may be withheld from the public record only upon meeting the Commission’s strict standards for *in camera* treatment and

Respondent was directed to file a motion by June 18, 2015, supported by an affidavit or declaration, demonstrating that these standards had been met.

Respondent did not file the required motion by June 18. Respondent's June 1 Motion did not sustain its burden of demonstrating that RX 646, RX 650, RX 652, and RX 657 meet the standards for *in camera* treatment set forth in Rule 3.45 and described in *In re LabMD, Inc.*, 2014 FTC LEXIS 128 (May 6, 2014). Accordingly, Respondent has failed to demonstrate that RX 646, RX 650, RX 652, and RX 657 should be withheld from the public record.

IV.

For the reasons stated above, Respondent's motion for permanent *in camera* treatment for RX 645 is GRANTED; Respondent's motion for permanent *in camera* treatment for RX 646, RX 650, RX 652, and RX 657 is DENIED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: June 22, 2015

Notice of Electronic Service

I hereby certify that on June 22, 2015, I filed an electronic copy of the foregoing Order Memorializing Bench Rulings and on Respondent's Motions for ICT, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on June 22, 2015, I served via E-Service an electronic copy of the foregoing Order Memorializing Bench Rulings and on Respondent's Motions for ICT, upon:

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