

In the Matter of Griffin Systems et al., FTC Dkt. No. 9249, 1993 FTC LEXIS 46 (March 9, 1993) (same).

LabMD does not consent to such withdrawal at this time.

Respondent's Counsel requests that the Commission enter an Order withdrawing CoA Institute and said Counsel from representation of LabMD before this Tribunal upon the filing by Respondent's Counsel of a reply as necessary to Complaint Counsel's answer to LabMD's application for stay of the Final Order pending review in a United States circuit court of appeals, or after time to file a reply has expired.

D.C. R. Prof. Conduct 1.16(b) permits an attorney to withdraw from representing a client "if withdrawal can be accomplished without material adverse effect on the interests of the client"¹ In this case, Cause of Action's withdrawal will have no material adverse effect on LabMD's interests. The Commission has entered its final decision, and there are no further proceedings pending except for LabMD's motion to stay the decision pending a petition for review. LabMD has engaged the law firm of Ropes and Gray LLP to represent it before a United States circuit court of appeals pursuant to 45 U.S.C. § 45(c).² ("Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any

¹ Applicable Rules of Conduct are incorporated by reference into the Commission Rules of Practice. See Rule 4.1(e)(1)(B), 16 C.F.R. § 4.1(e)(1)(B); see also 77 Fed. Reg. 59,294, 59,302-03 (Sept. 27, 2012) (noting duty of attorneys practicing before the Commission to comply with other applicable rules of conduct that are in addition to and consistent with the Commission's Rules of Practice).

² This representation is public and can be found on the Ropes and Gray website. See Ropes & Gray to Represent LabMD in FTC Data Security Challenge (Aug. 19, 2016), available at <https://www.ropesgray.com/newsroom/news/2016/08/Ropes-Gray-to-Represent-LabMD-in-FTC-Data-Security-Challenge.aspx> (last accessed Sept. 5, 2016).

circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside.”) Moreover, the Commission’s rules permit LabMD to proceed *pro se*, if necessary. Commission Rule 4.1(a)(2), 16 C.F.R. § 4.1(a)(2) (“A corporation or association may be represented by a bona fide officer thereof upon a showing of adequate authorization.”).

Even if the withdrawal would result in material adverse effect on the interest of the client, good cause exists to permit Cause of Action’s withdrawal pursuant to D.C. Rule of Prof Conduct 1.16(b)(4) and (5).³ *See* D.C. Ethics Opinion 317 (listing examples of good cause to allow an attorney’s withdrawal, even when prejudice to the client would result). Respondent’s Counsel are not at liberty to elaborate further on the reasons why good cause exists to grant this Motion. *See* D.C. R. Prof. Cond. 1.6. *Cf. In re Gonzalez*, 773 A.2d 1026, 1030-32 (D.C. 2001) (addressing improper motion for leave to withdrawal). If the Commission requires further support for the good-faith basis supporting good cause in the filing of this Motion, Respondent’s Counsel request that any such submission(s) be made *in camera* and that such submissions exclude information protected by the attorney-client privilege and/or attorney work product doctrine.

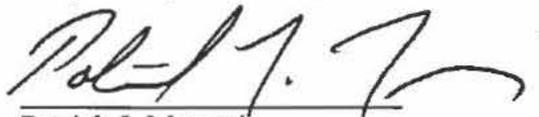
For the foregoing reasons, Respondent’s Counsel respectfully request that the Commission GRANT this Motion for Leave to Withdraw as Counsel of Record for Respondent LabMD, Inc.; find that no material adverse effects will result from withdrawal or that other good cause exists to permit withdrawal; and ORDER that the Secretary is directed to withdraw the appearances of

³ This representation is made in accordance with Respondent’s Counsels’ duty to this Tribunal under Rule 4.1(e)(1)(i)(D), 16 C.F.R. § 4.1(e)(1)(i)(D).

Respondent's Counsel as Counsel of Record for LabMD, Inc. from the Docket and Record in this case. A Proposed Order is attached.

September 6, 2016

Respectfully submitted,



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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

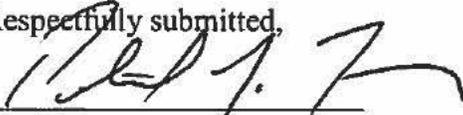
COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of)	DOCKET NO. 9357
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)	PUBLIC
LabMD, Inc., a corporation.)	
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MEET AND CONFER STATEMENT

Patrick J. Massari, Counsel for the moving party, hereby certifies that he conferred with Complaint Counsel Laura Van Druff on September 6, 2016 by telephone in a good-faith effort to resolve by agreement the issues set forth in Respondent’s Counsel’s Motion for Leave to Withdraw as Counsel of Record for Respondent, LabMD, Inc.

Complaint Counsel takes no position with respect to this Motion.

Respectfully submitted,


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In the Matter of)	DOCKET NO. 9357
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LabMD, Inc., a corporation.)	PUBLIC
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**[PROPOSED] ORDER GRANTING RESPONDENT’S COUNSEL’S MOTION FOR
LEAVE TO WITHDRAWAL AS COUNSEL OF RECORD FOR RESPONDENT
LabMD, INC.**

This matter came before the Commission on September 6, 2016 upon a Motion filed by Respondent’s Counsel pursuant to Commission Rule 3.22(a), 16 C.F.R. §3.22(a), and the District of Columbia Rules of Professional Conduct, for an Order granting Leave to Withdraw as Counsel of Record for Respondent LabMD, Inc.

Having considered this Motion and all supporting and opposition papers, and good cause appearing,

IT IS ORDERED that this Motion for Leave to Withdrawal as Counsel of Record for Respondent LabMD, Inc. is **GRANTED**.

IT IS FURTHER ORDERED that this Order will take effect immediately upon the filing of a reply as necessary by Respondent LabMD, Inc.’s Counsel to Complaint Counsel’s answer to LabMD, Inc.’s pending application for stay of the Final Order pending review by a United States circuit court of appeals, or after time to file a reply has expired.

IT IS FURTHER ORDERED that the Secretary is directed to withdraw the appearances of Respondent's Counsel as herein set forth as Counsel for said Respondent from the Docket and Record in this case.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED:

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2016, I caused to be filed the foregoing document electronically through the Office of the Secretary's FTC E-filing system, which will send an electronic notification of such filing to the Office of the Secretary:

Donald S. Clark, Esq.
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail copies of the foregoing document to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Michael J. Daugherty, in his capacity as President and Chief Executive Officer of
Respondent LabMD, Inc.

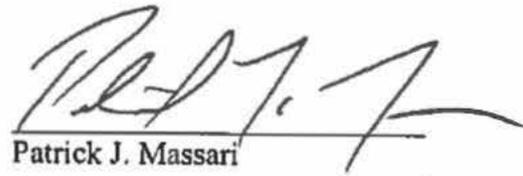
James W. Hawkins, Esq. d/b/a James W. Hawkins, LLC
Counsel for LabMD, Inc.

Douglas Meal, Esq.
Michelle Visser, Esq.
David Cohen, Esq.
Ropes & Gray LLP
Counsel for LabMD, Inc.

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Alain Sheer, Esq.
Laura Riposo Van Druff, Esq.
Megan Cox, Esq.
Ryan Mehm, Esq.
John Krebs, Esq.
Jarad Brown, Esq.
Division of Privacy and Identity Protection
Federal Trade Commission
600 Pennsylvania Ave., NW Room CC-8232
Washington, DC 20580

September 6, 2016



Patrick J. Massari

Notice of Electronic Service

I hereby certify that on September 06, 2016, I filed an electronic copy of the foregoing MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD FOR RESPONDENT LabMD, INC. UPON THE FILING OF A REPLY AS NECESSARY TO COMPLAINT COUNSEL'S ANSWER TO LabMD, INC.'S APPLICATION FOR STAY OF THE FINAL ORDER PENDING REVIEW BY A UNITED STATES CIRCUIT COURT OF APPEALS OR AFTER TIME TO FILE A REPLY HAS EXPIRED, 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 September 06, 2016, I served via E-Service an electronic copy of the foregoing MOTION FOR LEAVE TO WITHDRAW AS COUNSEL OF RECORD FOR RESPONDENT LabMD, INC. UPON THE FILING OF A REPLY AS NECESSARY TO COMPLAINT COUNSEL'S ANSWER TO LabMD, INC.'S APPLICATION FOR STAY OF THE FINAL ORDER PENDING REVIEW BY A UNITED STATES CIRCUIT COURT OF APPEALS OR AFTER TIME TO FILE A REPLY HAS EXPIRED, upon:

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