

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

In the Matter of

Hackensack Meridian Health, Inc.,  
a corporation,

and

Englewood Healthcare Foundation,  
a corporation,

Respondents

**PUBLIC**

DOCKET NO. 9399

**NON-PARTY CAREPOINT HEALTH MANAGEMENT ASSOCIATES,  
LLC'S MOTION FOR *IN CAMERA* TREATMENT**

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), non-party CarePoint Health Management Associates, LLC ("CarePoint") respectfully moves this tribunal for *in camera* treatment of six competitively-sensitive, confidential business documents (the "Confidential Documents"). CarePoint produced these materials, among voluminous others, in response to four third-party subpoenas and civil investigative demands in this matter. CarePoint designated and clearly labelled all the documents as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" at the time of production. CarePoint also requested, and Complaint Counsel and counsel for Respondents agreed to, confidential treatment for testimony and exhibits at the outset of the deposition. PX7021-012, line 14 – PG7021-013, line 19.

The Federal Trade Commission ("FTC") has now notified CarePoint that it intends to introduce two of CarePoint's Confidential Documents, into evidence at the administrative trial in this matter. *See* email from the FTC dated May 12, 2021 (attached as Exhibit A). Additionally, counsel for Respondent Hackensack Meridian Health, Inc. ("HMH") has notified CarePoint that it intendeds to introduce five of CarePoint's Confidential Documents, one in common with the FTC, into evidence at the administrative trial in this matter. *See* letter from counsel for HMH dated May 13, 2021 (attached as Exhibit B). CarePoint has conferred with Complaint Counsel and Respondents, and understands they do not object to *in camera* treatment.

In addition to the customary concerns of disclosing competitively sensitive data to competitors and customers, and unlike the other provider and payor third parties seeking *in camera* treatment, here CarePoint is uniquely at risk of harm from disclosure because CarePoint

(i)

and (ii)

Disclosure of these materials would exacerbate those two conditions, and be antithetical to the objectives of FTC policy and antitrust enforcement. While some of the level of financial, operational, and strategic detail in the Confidential Documents

For example, disclosure would provide dominant competitors with information to (i)

(ii)

and (iii)

But sharing CarePoint confidential strategy discussions with competitors at this time would severely

It is bad enough that CarePoint has been forced to expend substantial and scarce resources responding to subpoenas in a matter in which it has no interest; but it truly would be a tragedy if predatory rivals could misuse the merger review process to weaken CarePoint and substantially lessen competition.

The Confidential Documents, warrant protection from public disclosure given the sensitive business information and trade secrets they contain. Thus, CarePoint submits this Motion requesting permanent *in camera* treatment of the Confidential Documents in their entirety. All of the materials for which CarePoint is seeking *in camera* treatment are confidential business documents, such that if they were to become part of the public record, CarePoint would be significantly harmed in its ability to compete, including

The Confidential Documents in this instance are comprised of the type of documents that the FTC, as an expert in and enforcer of U.S. antitrust laws, would be uncomfortable with parties sharing or allowing to fall into the hands of actual or potential competitors. The antitrust laws and limitations placed by the FTC on the due diligence of merging parties prohibit firms from exchanging such information as is found in the Confidential Documents directly. This tribunal should not allow itself to be a conduit and condone the exchange of competitively sensitive information that would raise material antitrust enforcement risks if CarePoint exchanged directly with other hospitals, or worse yet could be used by third parties to facilitate predatory and exclusionary and other anticompetitive conduct, both of which would be antitrust paradoxes.

For the reasons discussed in this motion, CarePoint requests that this tribunal afford its confidential business documents *in camera* treatment indefinitely. Alternatively, if the Court should decide that indefinite *in camera* treatment is not appropriate for Confidential Documents CarePoint requests that this tribunal afford its confidential business documents *in camera* treatment for five years. In support of this motion, CarePoint relies on the Affidavit of William D. Pelino ("Pelino Declaration"), attached as Exhibit C, which provides additional details on the documents for which CarePoint is seeking *in camera* treatment.

**I. The Documents for Which Protection is Sought**

CarePoint seeks *in camera* treatment for the following Confidential Documents in their entirety, copies of which are attached as Exhibit D.

<b>Exhibit No.</b>	<b>Beg Bates</b>	<b>End Bates</b>
PX4029	CAREPOINT0423305	CAREPOINT0423308
DX0202	0002654	0002654

DX0204	0000354	0000354
DX0208	0001885	0001885
DX0210	0065817	0065826

CarePoint seeks *in camera* treatment for the following Confidential Documents in the indicated range, a copy of which is attached as Exhibit D.

<b>Exhibit No.</b>	<b>Document Description</b>	<b><i>In Camera</i> Requested Range (and DX5030 equivalent)</b>
PX7021 and DX5030	Deposition Transcript of Dr. Vijayant Singh	PX7021-017 – PX7021-240

**II. CarePoint’s Documents are Secret and Material, Such That Disclosure Would Result in Serious Injury to CarePoint**

*In camera* treatment of material is appropriate when its "public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting" such treatment. 16 C.F.R. § 3.45(b). The proponent demonstrates serious competitive injury by showing that the documents are secret and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, \*5 (1999). In this context, courts generally attempt "to protect confidential business information from unnecessary airing." *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

In considering both secrecy and materiality, the tribunal may consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1977).





6. PX7021 (also as DX5030) is the deposition transcript of Dr. Vijayant Singh. There are some early sections of the deposition which include foundational background questions which are admittedly part of the public record.

All of the foregoing information and discussion contained in the Confidential Documents should fairly be considered, as it was when it was created by CarePoint, as secret and material. Such information and strategy are proprietary to CarePoint and not publicly known outside of CarePoint. With the exception of the Deposition Transcript of Dr. Vijayant Singh, for which the desire to treat confidentially has been already documented, each of the Confidential Documents was created and shared internally with the belief that the documents were to be treated confidentially and on a need to know basis. Pelino Declaration ¶ 7. To the extent that any of the documents were shared with a third party, for example, they were shared only after the parties executed a non-disclosure agreement (indeed one such third party has sought confidential treatment in the current case). Confidentiality agreements also typically require recipients to return or destroy material. In addition, a hospital company like CarePoint should not be deterred from this critical self assessment (which could benefit the community and improve the quality of care) for fear that this would fall into the hands of rival

companies. Because of the highly confidential and proprietary nature of the information and its materiality to CarePoint's business, *in camera* treatment is appropriate.

Further, disclosure of the Confidential Documents will result in the loss of a business advantage to CarePoint. See *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 at \*7 (Dec. 23, 1999) ("The likely loss of business advantages is a good example of a 'clearly defined, serious injury.>"). The Confidential Documents are material to CarePoint's strategy and operation in order to compete with other hospital companies. For example,

For example,

Likewise, disclosure will

Making such documents public would result in a loss of business advantage that CarePoint has built as the result of its own substantial investments in the development of its proprietary operations and confidential business strategy. As a practical matter, any public disclosure in this matter would be highly unlikely to advance any public interest, but rather simply would give access to other third parties who and who are zealously trying to prevent disclosure of their own materials here too.

**III. CarePoint's Status as a Non-Party is Relevant to the Treatment of its Documents and Should Weigh in Favor of Granting *In Camera* Treatment.**

Finally, CarePoint's status as a third party is relevant to the treatment of its documents. The FTC has held that "[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible." *H.P. Hood & Sons*, 58 F.T.C. at 1186. This is especially so in the case of a third-party, which deserves

"special solicitude" in its request for in camera treatment for its confidential business information. *See In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 500 (1984) ("As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests."). Indeed CarePoint relied on confidentiality assurances in not objecting to the burdensome discovery requests. CarePoint is not a party to this case. Nor is it a third party beneficiary. Indeed, quite the opposite, as CarePoint has had to endure substantial third party discovery costs and distractions related to this case. Nor does CarePoint have any strategic interest in the outcome, one way or the other. Accordingly, CarePoint has tried to minimize its involvement and unnecessary (but substantial) costs here, while treating the Parties neutrally and respectfully, and to be a good corporate citizen and to comply with its legal obligations.

In this instance the primary or sole beneficiaries of any public disclosure would be undermine the quality and continuity of care at the CarePoint hospitals. It would be paradoxical if the Court allowed a suit intended to enforce the antitrust laws to indirectly become a conduit to diminish competition. Similarly, the Court should not become a conduit for the exchange of the competitively sensitive information that the antitrust laws would not let the hospitals exchange directly in the ordinary course of business. Any minimal benefit of public disclosure is offset by the harm to CarePoint and the risk to the community it serves. Reciprocally, CarePoint should not be allowed to see the competitively sensitive information and data of the Parties and many other third parties in the immediate action.

CarePoint's third-party status therefore weighs in favor of granting *in camera* status to the Confidential Documents.

#### IV. Conclusion

For the reasons set forth above, in the accompanying Pelino Declaration, given the highly sensitive and detailed nature of the information contained in the Confidential Documents,

and the increased harm that CarePoint would suffer if such documents were made available CarePoint respectfully requests that this tribunal grant permanent *in camera* treatment for the Confidential Documents in their entirety and indefinitely or in part as indicated.

Dated: May 28, 2021

Respectfully Submitted,

/s/ Keith D. Shugarman

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Keith D. Shugarman  
Shugarman Advisors  
1629 K. Street, NW  
Washington, DC 20006  
+1-202-674-8311  
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Only admitted and practicing in  
Washington, DC, USA (#416534)  
COUNSEL FOR CAREPOINT HEALTH  
MANAGEMENT ASSOCIATES, LLC

# Exhibit A

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

From: "Megaw, Christopher" <[cmegaw@ftc.gov](mailto:cmegaw@ftc.gov)>

To: "Keith D. Shugarman" <[kshugarman@shugarmanadvisors.com](mailto:kshugarman@shugarmanadvisors.com)>

Cc: "Flint, Phoebe" <[pflint@ftc.gov](mailto:pflint@ftc.gov)>, "Hill, Brittany" <[bhill1@ftc.gov](mailto:bhill1@ftc.gov)>

Date: May 12, 2021 6:07 PM

Subject: D09399 - Hackensack Meridian Health, Inc and Englewood Healthcare Foundation (Part III)

Dear Keith,

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 intends to offer the document and testimony referenced below into evidence in the administrative trial in the above-captioned matter. We previously sent you electronic copies of these exhibits in advance of a similar deadline for the federal proceeding—to the extent you need us to resend copies of these to you, please let me know and we will send them to you electronically. The administrative trial is currently scheduled to begin on June 15, 2021. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants in camera status.

For documents and 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 and 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.

Motions for in camera treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800-Contacts, Inc.*, 2017 FTC

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LEXIS 55 (April 4, 2017); In re Jerk, LLC, 2015 FTC LEXIS (Feb. 23, 2015); and In re Basic Research, Inc., 2006 FTC Lexis 14 (Jan. 25, 2006). Motions must also be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. In re 1-800-Contacts, Inc., 2017 FTC LEXIS 55 (April 4, 2017); In re North Texas Specialty Physicians, 2004 FTC LEXIS 66 (April 23, 2004). For your convenience, attached is an example of a third-party motion for in camera treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for in camera treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/faq/ftc-info/file-documents-adjudicative-proceedings>.

Please be aware that under the current Scheduling Order, the deadline for filing motions seeking in camera status is **May 24, 2021**. A copy of the Current Scheduling Order is attached. To the extent this deadline is extended, I will let you know.

If you have any questions, please feel free to contact me at (202) 326-2112.

**LIST OF EXHIBITS**

<b>Exhibit No.</b>	<b>Beg Bates</b>	<b>End Bates</b>
PX4029	CAREPOINT0423305	CAREPOINT0423308
PX7021	Deposition Transcript of Dr. Vijayant Singh	

Best regards,

Chris

**Chris Megaw**

Attorney, Mergers IV

Bureau of Competition

(202) 326-2112 | [cmegaw@ftc.gov](mailto:cmegaw@ftc.gov)

**Chris Megaw**

Attorney, Mergers IV

Bureau of Competition

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Think before you click! This email originated outside of Davis+Gilbert.

# Exhibit B



faegredrinker.com

Paul H. Saint-Antoine  
Partner  
paul.saint-antoine@faegredrinker.com  
215-988-2990 direct

Faegre Drinker Biddle & Reath LLP  
One Logan Square, Suite 2000  
Philadelphia, Pennsylvania 19103  
+1 215 988 2700 main  
+1 215 988 2757 fax

May 13, 2021

**VIA E-MAIL**

CarePoint Health System  
c/o Keith Shugarman, Esq.  
Shugarman Advisors  
kshugarman@shugarmanadvisors.com

Re: *In the Matter of Hackensack Meridian Health, Inc. and Englewood Healthcare Foundation*,  
Docket No. 9399; Notification Pursuant to the Protective Order Governing Confidential  
Material

Dear Keith:

This firm is counsel to Respondent Hackensack Meridian Health, Inc. ("HMH") in the above-referenced action. Pursuant to Paragraph 10 of the attached Protective Order Governing Confidential Material, HMH is hereby providing notice to CarePoint Health System ("CarePoint") that certain of its documents, set forth in Attachment A, appear on Respondents' Exhibit List. Respondents produced their Exhibit List to the FTC yesterday, May 12, 2021. Pursuant to the Scheduling Order in this matter, CarePoint may move to seal any of its documents, or portions thereof, under 16 C.F.R. § 3.45 by filing an appropriate motion with the Administrative Law Judge by May 24, 2021. Rule 3.45 provides that material may be sealed only if "its public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting in camera treatment or after finding that the material constitutes sensitive personal information." Under Paragraph 10, "[e]xcept where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record."

Please contact me if you have any questions or concerns regarding the foregoing.

Very truly yours,

/s/ Paul H. Saint-Antoine

Paul H. Saint-Antoine

PHS/nsf

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Keith Shugarman, Esq.

-2-

May 13, 2021

**ATTACHMENT A**

<b>Exhibit No.</b>	<b>Begin Bates</b>	<b>End Bates</b>	<b>Description</b>
DX0202	CAREPOINT0002654	CAREPOINT0002654	N/A
DX0204	CAREPOINT0000354	CAREPOINT0000354	N/A
DX0208	CAREPOINT0001885	CAREPOINT0001885	N/A
DX0210	CAREPOINT0065817	CAREPOINT0065826	N/A
DX5030	N/A	N/A	Vijayant Singh (CarePoint) Deposition Transcript

PUBLIC

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

_____	)	
In the Matter of	)	
	)	
Hackensack Meridian Health, Inc.,	)	
a corporation,	)	Docket No. 9399
	)	
and	)	
	)	
Englewood Healthcare Foundation,	)	
a corporation,	)	
	)	
Respondents.	)	
_____	)	

**PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL**

Commission Rule 3.31(d) states: “In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section.” Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell  
Chief Administrative Law Judge

Date: December 7, 2020

## ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

**IT IS HEREBY ORDERED THAT** this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be 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. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation “CONFIDENTIAL – FTC Docket No. 9399” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL – FTC Docket No. 9399” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.
7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.
8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.
9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

# Exhibit C

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

In the Matter of

Hackensack Meridian Health, Inc.,  
a corporation,

and

Englewood Healthcare Foundation,  
a corporation,

Respondents

**PUBLIC**

DOCKET NO. 9399

**DECLARATION OF WILLIAM PELINO IN SUPPORT OF NON-PARTY  
CAREPOINT HEALTH MANAGEMENT ASSOCIATES, LLC'S MOTION  
FOR *IN CAMERA* TREATMENT**

I, William D. Pelino, hereby declare as follows:

1. I am the Chief Financial Officer of CarePoint Health Management Associates, LLC ("CarePoint"). I make this declaration of support of Non-Party CarePoint's Motion for *in camera* treatment (the "Motion"). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I have reviewed and am familiar with the documents CarePoint produced in

the above-captioned matter in response to subpoenas and civil investigative demands from the Federal Trade Commission (“FTC”) and Respondents. Given my position at CarePoint, I am familiar with the type of information contained in the documents at issue and its competitive and strategic significance to CarePoint. Based on my review of the documents, my knowledge of CarePoint’s , and my familiarity with the confidentiality protection afforded this type of information by CarePoint, I submit that the disclosure of these documents to the public and especially to competitors of CarePoint would cause serious competitive injury to CarePoint.

3. I understand that the FTC and Respondents have proposed to use a subset of CarePoint’s produced documents as exhibits (“Proposed Exhibits”) in an upcoming proceeding before the FTC.

4. CarePoint produced the Proposed Exhibits and other documents with the understanding that CarePoint would have the opportunity to prevent the public release of these documents should they be used in any public proceeding. To this end, CarePoint has continually asserted and requested “Confidential” treatment of these documents.

5. At the time of production CarePoint designated these documents “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” and under the understanding that CarePoint would have the opportunity to prevent the public release of these documents should they be used in any future administrative proceeding.

6. At the time of the Deposition of Doctor Vijayant Singh, CarePoint counsel requested and all parties agreed to treat the testimony and exhibits therein confidential treatment.

7. CarePoint has taken and continues to take additional steps to safeguard the

Confidential nature of the Proposed Exhibits and the information they contain such as limiting internal access to a need to know basis, and requiring execution of confidentiality and non-disclosure agreements with others who might gain access to such documents.

8. The Proposed Exhibits contain details of CarePoint's business operations, methodologies, strategies, and finances, among other secret and material content

9. The Proposed Exhibits, if disclosed, would release to the public, especially CarePoint's rivals, details of CarePoint's business operations, proprietary analysis of CarePoint's successes and failures and weaknesses, as well as strategic planning including such closely guarded secrets as potential expansion initiatives, strategic partnerships, and potential merger and acquisition plans, among other things.

10. Disclosure of the information contained in the Proposed Exhibits would inflict serious injury on CarePoint by enabling, for instance,

to impede CarePoint's efforts to improve the quality of care for our community.

11. CarePoint's strategic planning is not information that is available to the general public, or our customers and competitors. This analysis and strategic planning is critical to CarePoint's revenue-generating activity and the significance of such information is not likely to diminish in the foreseeable future. Indeed

Likewise,

12. CarePoint has invested significant time and money developing its unique approach and strategy to the business of quality healthcare, and making available to the public the highly confidential information contained in the Proposed Exhibits would result in serious competitive harm to CarePoint.

13. As CarePoint's Chief Financial Officer, I am well aware of CarePoint's  
I  
believe that CarePoint is uniquely at risk of harm from disclosure because CarePoint (i)

and (ii)

Disclosure of these materials would exacerbate those two risks, and seems antithetical to my understanding of the goals of antitrust law. While some of  
the level of financial, operational, and strategic detail in these  
documents

For example,  
disclosure would provide dominant competitors with information to (i)

(ii)

and (iii)

14.

better serve) our community.

15. It is frustrating enough that CarePoint has been forced to expend substantial and scarce resources responding to subpoenas in a matter in which we have no interest; but it truly would be a tragedy if \_\_\_\_\_ could misuse the merger review process to weaken CarePoint and substantially lessen competition.

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Executed on May 28, 2021

A handwritten signature in black ink, appearing to read "William D. Pelino", written over a horizontal line.

William D. Pelino  
Chief Financial Officer  
CarePoint Health Management  
Associates, LLC

# Exhibit D

**Hearing Exhibits - Redacted in  
Entirety**

## CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2021, I filed the foregoing document electronically using the FTC's E-Filing System.

I also certify that I caused the foregoing document to be served via email to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
[ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov)

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
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**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

May 28, 2021

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

In the Matter of

Hackensack Meridian Health, Inc.,  
a corporation,

and

Englewood Healthcare Foundation,  
a corporation,

Respondents

**PUBLIC**

DOCKET NO. 9399

**[PROPOSED] ORDER**

Upon consideration of Non-Party CarePoint Health Management Associates, LLC’s (“CarePoint’s”) Motion for *In Camera* treatment, it is HEREBY ORDERED that the following documents are to be provided permanent *in camera* treatment from the date of this Order in their entirety.

<b>Exhibit No.</b>	<b>Beg Bates</b>	<b>End Bates</b>
PX4029	CAREPOINT0423305	CAREPOINT0423308
DX0202	0002654	0002654
DX0204	0000354	0000354
DX0208	0001885	0001885
DX0210	0065817	0065826

In addition, it is HEREBY ORDERED that the following documents are to be provided permanent *in camera* treatment from the date of this Order in the requested range.

Exhibit No.	Document Description	<i>In Camera</i> Requested Range (and DX5030 equivalent)
PX7021 and DX5030	Deposition Transcript of Dr. Vijayant Singh	PX7021-017 – PX7021-240

**ORDERED:**

\_\_\_\_\_  
 D. Michael Chappell  
 Chief Administrative Law Judge

DATE: \_\_\_\_\_