

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of
NORTH TEXAS SPECIALTY PHYSICIANS,
a corporation.

Docket No. 9312

**NON-PARTY BAYLOR ALL SAINTS MEDICAL CENTER'S MOTION
FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE**

Baylor All Saints Medical Center ("Baylor All Saints"), which is not a party to the above-captioned action, respectfully requests that this court grant *in camera* treatment of a document that Complaint Counsel and North Texas Specialty Physicians ("NTSP") have designated for possible introduction in the administrative trial in this matter. By letter dated March 15 and 16, 2004, respectively, Complaint Counsel and NTSP notified Baylor All Saints that they intend to introduce into evidence a document marked BASMC/NTSP 001 to BASMC/NTSP 018 (incorporated in Complaint Counsel's Trial Exhibit Number CX0403), which Baylor All Saints produced in response to the Complaint Counsel's subpoena in this matter. The information contained in this document is competitively sensitive and is held in strict confidence by Baylor All Saints. Public disclosure of this document is likely to cause direct, serious harm to Baylor All Saints' competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(b), Baylor All Saints respectfully moves for *in camera* treatment of the confidential document identified in the Declaration in support of this Motion, and attached hereto as Exhibit A.

**BAYLOR ALL SAINTS' CONFIDENTIAL DOCUMENT DESERVES
IN CAMERA TREATMENT UNDER THE FEDERAL TRADE
COMMISSION'S RULES OF PRACTICE**

The document that is described in this motion warrants *in camera* treatment as provided by 16 C.F.R. § 3.45(b). Under 16 C.F.R. § 3.45(b), requests for *in camera* treatment must show that public disclosure of the document in question “will result in a clearly defined, serious injury to the person or corporation whose records are involved.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the document in question is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). In this context, “the courts have generally attempted to protect confidential business information from unnecessary airing.” *Hood*, 58 F.T.C. at 1188. Under this standard, *in camera* treatment of the document in question is warranted.

A. Baylor All Saints Has Preserved the Confidentiality Of The Document and Information

Baylor All Saints has taken significant steps to protect the confidential nature of this document, which was created to respond to Complaint Counsel’s subpoena. The document was created and produced only under compulsory process and pursuant to the Protective Order Governing Discovery Material issued in this matter on October 16, 2003 (the “Protective Order”). The purpose of the Protective Order was to expedite discovery while ensuring that materials produced would receive sufficient protection from disclosure to competitors. Baylor All Saints designated Exhibit A as “Restricted Confidential – Attorney Eyes Only” under the Protective Order. This was the highest designation of confidentiality available and severely limited circulation of the document. See Declaration of Sandy Aaron (“Aaron Decl.”) ¶ 8.

In addition to these measures, Baylor All Saints has followed other procedures that demonstrate its intention to preserve the privacy of the information. First, the information is not at all known outside of Baylor All Saints. (Aaron Decl. ¶ 7.) Second, the information is disclosed only to particular employees of Baylor All Saints on a “need to know” basis. (Id.) Third, Baylor All Saints takes substantial measures to guard the secrecy of the information at issue, limiting its dissemination and taking every reasonable step to protect its confidentiality. (Aaron Decl. ¶¶ 7 and 8.) It would be extremely difficult – if not impossible - for Baylor All Saints’ competitors to recreate the information in the documents at issue. (Aaron Decl. ¶ 7.) These efforts demonstrate that Baylor All Saints has gone to great lengths to preserve the confidentiality of the information contained in Exhibit A.

B. Disclosure Of The Information In Exhibit A Would Result In Serious Competitive Injury To Baylor All Saints

Exhibit A contains information that is highly valuable to Baylor All Saints because it is competitively sensitive. Specifically, the document lists for each year 1998, 2000, and 2002 each physician who has admitting privileges at Baylor All Saints; the total number of admission days accounted for by each such physician; and the total revenues attributable to those admissions. This information is central to Baylor All Saints’ business and clinical services strategic planning and its goal of outperforming its competitors, whose use of such information would directly harm Baylor All Saints. (Aaron Decl. ¶ 5.) If this information were to be made public, Baylor All Saints’ competitors could pinpoint the physicians who admit the highest volume of inpatients to Baylor All Saints and could use this list of “high producers” to specifically target and build relationships with such physicians for their own competitive gain, resulting in serious competitive harm to Baylor All Saints. (Aaron Decl. ¶ 6.) At least four of

Baylor All Saints' competitors have facilities within a three-mile radius of Baylor All Saints' main campus, and physicians can easily admit their patients to these facilities rather than to Baylor All Saints. (Id.) Access to this information would also enable a competitor to understand Baylor All Saints' strengths and weaknesses in particular clinical specialties and geographic areas and therefore could be used by competitors to Baylor All Saints' severe competitive disadvantage. (Aaron Decl. ¶ 5.) Knowledge about the physicians who are key to Baylor All Saints and their practice patterns would arm competitors with information that strikes at the core of Baylor All Saints' business. This would have an immediate and detrimental effect on Baylor All Saints' ability to compete, while Baylor All Saints would enjoy no similar advantage over its competitors (whose top revenue-generating physicians and practice specialties would remain unknown to Baylor All Saints).

C. The Public Interest In Disclosure Of Exhibit A Is Outweighed By The Likelihood Of Serious Competitive Harm To Baylor All Saints

Baylor All Saints deserves "special solicitude" as a non-party requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corporation*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for sales statistics over five years old). Reasonable periods of *in camera* treatment encourage non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* Baylor All Saints has cooperated fully with the discovery demands in this case. Conversely, disclosing documents containing Baylor All Saints' highly confidential information will not materially promote the resolution of this matter, nor will these documents lend measurable public understanding of these proceedings. The balance of interests clearly favors *in camera* protection for Exhibit A. *See In*

re Bristol-Myers, 90 F.T.C. 455, 456 (1977) (describing six-factor test for determining secrecy and materiality).

D. Protection for Exhibit A Should Extend For Seven Years

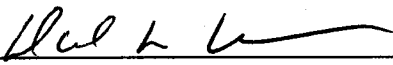
The nature of the information contained in Exhibit A to Baylor All Saints' business warrants lasting protection. The patient days and related charges attributed to each attending physician at Baylor All Saints is vital to Baylor All Saints' competitive position and business strategy. [INFORMATION REDACTED.] Accordingly, Baylor All Saints respectfully requests that this document be afforded *in camera* protection for a period of seven years.

CONCLUSION

Exhibit A satisfies the standard for *in camera* protection under the Commission's Rules of Practice and relevant FTC precedent. Accordingly, this Court should extend *in camera* protection to this confidential document.

DATED: March 29, 2004

Respectfully submitted,



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PROPOSED ORDER

On March 29, 2004, Non-Party Baylor All Saints Medical Center (“Baylor All Saints”) filed a motion for *in camera* treatment of confidential business information contained in a document that Complaint Counsel and North Texas Specialty Physicians (“NTSP”) have identified as a potential trial exhibit.

IT IS HEREBY ORDERED that Baylor All Saints’ Motion is GRANTED. The information set forth in the document numbered BASMC/NTSP 001 to BASMC/NTSP 018 will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding for a period of seven years.

IT IS FURTHER ORDERED that only authorized Federal Trade Commission (“Commission”) personnel, and court personnel concerned 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 the proceeding.

ORDERED: _____

D. Michael Chappell
Administrative Law Judge

DATED: _____

CERTIFICATE OF SERVICE

I certify that on March 29, 2004, I caused the Non-Party Baylor All Saints Medical Center's Motion for *In Camera* Treatment of Proposed Evidence to be served by the method indicated upon the following:

Via Federal Express and Email

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FEDERAL TRADE COMMISSION
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New York, New York 10004

Via Federal Express and Email

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**Attorneys for
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Via Federal Express and Email

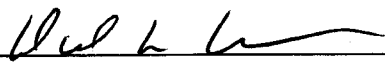
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Daniel L. Wellington
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EXHIBIT A

[REDACTED]

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**DECLARATION OF SANDY AARON IN SUPPORT OF BAYLOR ALL SAINTS
MEDICAL CENTER'S MOTION FOR *IN CAMERA* TREATMENT**

I, Sandy Aaron, declare as follows:

1. I am Chief Operating Officer and Interim President at Baylor All Saints Medical Center ("Baylor All Saints"). My responsibilities in that capacity include overseeing all operations of Baylor All Saints including strategic planning.
2. Baylor All Saints is not a party to the above-captioned matter.
3. The document for which Baylor All Saints seeks in camera treatment, attached as Exhibit A hereto, is numbered BASMC/NTSP 001 to BASMC/NTSP 018.
4. I have reviewed the document for which Baylor All Saints seeks *in camera* treatment. By virtue of my position as described above, I am familiar with the type of information contained in the document at issue. Based upon my review of this document, my knowledge of Baylor All Saints' business, and my familiarity with the confidentiality protection afforded this type of information by Baylor All Saints, it is my belief that disclosure of this document to the public and to competitors of Baylor All Saints would cause serious competitive injury to Baylor All Saints.
5. Exhibit A contains internal competitive information of a highly sensitive nature. The information regarding the total number of admission days accounted for by physicians with admitting privileges at Baylor All Saints, together with the total revenues

attributable to those admissions, is a central part of Baylor All Saints' business strategic planning and its goal of outperforming its competitors.

6. If competitors were to obtain the information contained in Exhibit A, they would be able to identify those physicians at Baylor All Saints that create high volumes of inpatient admissions for the hospital. Competitors could use this information to build their own relationships with those physicians for their own competitive gain, resulting in serious competitive injury to Baylor All Saints. At least four of Baylor All Saints' competitors have facilities within a three-mile radius of Baylor All Saints' main campus and physicians could easily admit their patients to these facilities rather than to Baylor All Saints. This information would also equip competitors with information about Baylor All Saints' marketplace strengths and weaknesses, such as in medical specialties and geographic areas. At the same time, Baylor All Saints would not have parallel information on its competitors.

7. The information contained in Exhibit A is not widely known or distributed. It is disclosed only to particular employees of Baylor All Saints on a "need to know" basis. I do not believe Baylor All Saints' competitors or other outside persons or organizations would have any way of accessing or recreating the information in these documents.

8. Baylor All Saints designated Exhibit A as "Restricted Confidential – Attorney Eyes Only" because Baylor All Saints takes the secrecy of this document very seriously and feels that distribution of this information should be severely limited.

9. **[INFORMATION REDACTED.]** Therefore, the confidentiality of this document warrants lasting protection.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 26th day of March, 2004, in Texas.

Sandy L. Aaron
Sandy Aaron

Sworn and subscribed to before me
this 26th day of March, 2004

Renae Davis
Notary Public

My Commission Expires: 3/6/06

