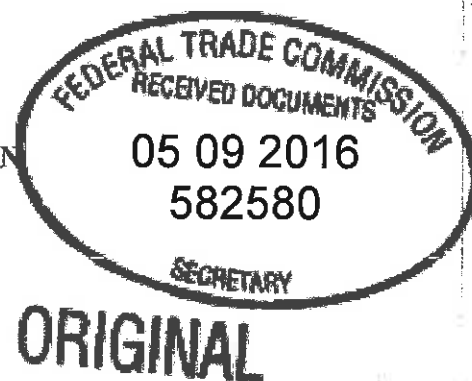


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of The Penn State Hershey
Medical Center, a corporation, and
PinnacleHealth System, a corporation.

Docket No. 9368

PUBLIC

**NON-PARTY WELLSPAN HEALTH'S MOTION FOR *IN CAMERA* TREATMENT OF
CERTAIN DESIGNATED HEARING EXHIBITS
AND DEPOSITION TESTIMONY**

Non-Party WellSpan Health ("WellSpan") respectfully moves for *in camera* treatment of certain confidential hearing exhibits and deposition testimony that either the Federal Trade Commission ("FTC") or Respondents The Penn State Hershey Medical Center or PinnacleHealth System (collectively, "Respondent") have designated as exhibits for possible introduction in the administrative hearing in this matter, scheduled to commence on May 17, 2016. Each of the documents is confidential material pursuant to Sections 6(f) and 21 of the Federal Trade Commission Act, *see* 15 U.S.C. §§ 46(f), 57b-2 (2012) and/or the Protective Order Governing Discovery Material entered by the Court on December 8, 2015 ("Protective Order").¹ In addition, certain portions of the deposition testimony of WellSpan's president and chief executive officer were designated "CONFIDENTIAL" in accordance with the terms of the


¹ WellSpan's document productions to the FTC predated the issuance of the Protective Order. In response to a subpoena served by the FTC in connection with its investigation, WellSpan produced 1,846 pages on July 17, 2015, 2,065 pages on July 31, 2015, and 67 pages on August 24, 2015. Spreadsheets were produced in native format and counted as a single page each. The FTC subsequently produced those documents to Respondent on the condition that they would be treated as confidential material. These documents were entitled to confidential treatment pursuant to Sections 6(f) and 21 of the Federal Trade Commission Act. *See* 15 U.S.C. §§ 46(f), 57b-2 (2012). The Protective Order provides that materials entitled to confidential treatment under the Federal Trade Commission Act are treated as confidential material under the Protective Order. (Protective Order ¶ 2.) Subsequently, in response to subpoenas served by Respondent, WellSpan objected: "WellSpan objects to the Subpoenas to the extent they call for the production of documents that relate to or contain proprietary or confidential business information, trade secrets, or competitively sensitive information belonging to WellSpan. Any documents produced by WellSpan should be considered confidential in accordance with the Protective Order entered in this case and not filed in the public record." WellSpan produced 193 pages on February 16, 2016. Spreadsheets were produced in native format and counted as a single page each.

Protective Order. These documents contain highly confidential and proprietary information that is both secret and material to WellSpan's present and future business, public disclosure of which will result in clearly defined, serious competitive harm to WellSpan.

As a result, WellSpan respectfully requests that the Administrative Law Judge enter an Order pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), granting *in camera* treatment for no less than seven (7) years, to the documents listed in Exhibit 1 attached to this Motion and the proposed Order.² In support of this Motion, WellSpan respectfully refers the Court to the Objections of WellSpan to Respondent's subpoenas, Exhibit 2 hereto, an electronic mail communication of counsel objecting to the disclosure of the Declaration of Kevin Mosser obtained by the FTC in its investigation, Exhibit 3 hereto, a letter of counsel designating certain portions of Dr. Mosser's deposition testimony confidential, Exhibit 4 hereto, the accompanying Declaration of Dr. Kevin Mosser, Exhibit 5 hereto, and WellSpan's Memorandum of Law.

Dated: May 9, 2016

STEVENS & LEE, P.C.

By 
Neil C. Schur
1818 Market Street, 29th Floor
Philadelphia, Pennsylvania 19103
(215) 751-1944
ncsc@stevenslee.com

*Counsel for Non-Party WellSpan Health
and Dr. Kevin Mosser*

² WellSpan does not seek *in camera* treatment of DX 1061 or the portions of the transcript of the deposition of Kevin Mosser that were not designated confidential. See Exhibit 4.

Exhibit 1

ATTACHMENT A

Exhibit No.	Description	Date	Begin Dates	End Dates
PX00702	Declaration: Kevin Mosser (WellSpan)	11/10/2015	PX00702-001	PX00702-005
PX00782	WellSpan Presentation: Good Samaritan Health System (GSH) Transaction.	11/21/2014	WS SDT001458	WS SDT001505
PX00815	WellSpan Presentation: WellSpan Health / Good Samaritan Health System Strategic Intent to Affiliate."	1/13/2014	WS SDT000482	WS SDT000526
PX00816	WellSpan Presentation: Year-End Progress - "Green Book" Report.	00/00/0000	WS SDT000575	WS SDT000615
PX01216	Kevin Mosser Deposition Transcript	2/12/2016	PX01216-001	PX01216-136
PX01577	Presentation: Lancaster County TIA/Stroke Market Assessment December 2015	00/00/0000	WS0048	WS0052
PX01578	Presentation: Good Samaritan Health System (GSH) Transaction" to WellSpan Health Board of Directors	11/21/2014	WS SDT000527	WS SDT000574
PX01581	Presentation: Lancaster County Primary Area Inpatient Discharges & Outpatient Procedures Service Volume and Market Share Overview January 2016	00/00/0000	WS0017	WS0026
PX01582	Presentation: Lebanon County Inpatient Discharges & Outpatient Procedures Service Volume and Market Share Overview January 2016	00/00/0000	WS0061	WS0071
PX01583	Presentation: Lebanon County TIA/Stroke Market Assessment December 2015	12/00/2015	WS0096	WS0099
PX01584	Presentation: York & Adams Counties TIA/Stroke Market Assessment December 2015	12/00/2015	WS0133	WS0140

ATTACHMENT A

Exhibit Number	Title	Date	Document ID/Produced Doc Label - Beginc	Document ID/Produced Doc Label - EndDoc	Admissibility
DX0011	Declaration of Dr. Kevin Mosser, M.D.	10/28/2015	FTC-PROD-0000837	FTC-PROD-0000841	
DX0028	Lancaster County Primary Service Area Inpatient & Outpatient Procedures Service Volume and Market Share Overview January 2016	1/1/2016	WS 0017	WS 0026	
DX0029	Lebanon County Primary Service Area Inpatient & Outpatient Procedures Service Volume and Market Share Overview January 2016	1/1/2016	WS 0061	WS 0071	
DX00730	Lebanon County General Surgery Market Assessment September 2015	9/1/2015	WS 0076	WS 0079	
DX00731	Lebanon County Thoracic Surgery Market Assessment October 2015	10/1/2015	WS 0093	WS 0095	
DX00732	WellsSpan Service Area Pediatric ENT Surgery Outmigration to PSU Hershey September 2015	9/1/2015	WS 0107	WS 0109	
DX00733	WellsSpan Service Area Pediatric Surgery Market Assessment September 2015	9/1/2015	WS 0110	WS 0116	
DX00734	WellsSpan Service Area Pediatric Inpatient Services Outmigration to PSU Hershey September 2015	9/1/2015	WS 0117	WS 0118	
DX00735	PSU Hershey Inpatient Admissions Originating from WellsSpan Primary Service Area - Age 0-17	00/00/0000	WS 0127	WS 0128	
DX00736	Presentaton: WellsSpan Health 2015 Budget & Five Year Projections	5/30/2014	WS SDT 000398	WS SDT 000447	
DX00737	Presentaton: WellsSpan Health/Good Samaritan Health System Strategic Intent to Affiliate	1/13/2014	WS SDT 000482	WS SDT 000526	
DX00738	Presentaton: WellsSpan PCT Business Plan 11-5-14	11/5/2014	WS SDT 000604	WS SDT 000623	
DX00739	Presentaton: Good Samaritan WellsSpan Board of Directors 9-27-13	9/27/2013	WS SDT 001326	WS SDT 001376	
DX00740	Email From D. Regan to T. Norton re FTC Requested Information	7/14/2015	WS SDT 001842	WS SDT 001844	
DX00848	Master Collaboration Agreement By and Among WellsSpan Health and Johns Hopkins University	00/00/0000	WS 0149	WS 0172	
DX00851	Presentaton: Good Samaritan Health System (GSH) Transaction, WellsSpan Health Board of Directors 11/21/14	11/21/2014	WS SDT 000527	WS SDT 000574	
DX10049	Presentaton: WellsSpan Health/ Good Samaritan Health System - Strategic Intent to Affiliate (Final Draft 1/13/14)	1/13/2014	GOODSAM-FTC-000267	GOODSAM-FTC-000314	
DX10050	The Good Samaritan Hospital - List of Competitors	00/00/0000	GOODSAM-FTC-000695	GOODSAM-FTC-000697	
DX10051	The Good Samaritan Hospital - List of Competitors	00/00/0000	GOODSAM-FTC-000698	GOODSAM-FTC-000698	
DX10052	Challenges of Affiliation, Steering Committee Meeting #1, 1/30/13	1/30/2013	GOODSAM-FTC-000879	GOODSAM-FTC-000902	
DX10053	Presentaton: Good Samaritan Health System - Exploring and Evaluating the Benefits and Challenges of Affiliation, Steering Committee Meeting #2, 2/21/13	2/21/2013	GOODSAM-FTC-000903	GOODSAM-FTC-000928	
DX10054	Presentaton: Good Samaritan Health System - Exploring and Evaluating the Benefits and Challenges of Affiliation, Steering Committee Meeting #3, 3/21/13	3/21/2013	GOODSAM-FTC-000929	GOODSAM-FTC-000964	
DX10055	Presentaton: Good Samaritan Health System - Strategic Plan 2011-2014 Appendices, July 2011	00/07/2011	GOODSAM-FTC-005701	GOODSAM-FTC-005786	
DX10056	Presentaton: Good Samaritan Health System - 2011-2014 Strategic Plan Planning Assessment and Goals Summary	00/00/0000	GOODSAM-FTC-005839	GOODSAM-FTC-005850	
DX10057	Good Samaritan Health System - Action Plan: Program Development, 2013-2014	3/30/2014	GOODSAM-FTC-005851	GOODSAM-FTC-005854	
DX10058	Good Samaritan Hospital - Planning Committee, of the Board of Trustees 10/13/14	10/13/2014	GOODSAM-FTC-010221	GOODSAM-FTC-010223	
DX10059	Presentaton: Pediatrics/Pulmonary Update, Planning Committee	4/14/2014	GOODSAM-FTC-010300	GOODSAM-FTC-010300	
DX10060	Institute, Spring 2015	00/00/2015	GOODSAM-FTC-012597	GOODSAM-FTC-012597	
DX10061	Central Penn Business Journal - The race for patients is on in Lebanon County	8/21/2015	GOODSAM-FTC-013628	GOODSAM-FTC-013630	
DX10577	WellsSpan Year-End Progress Report 2014-2015	7/13/2015	WS SDT 000575	WS SDT 000615	
DX10654	Mosser Deposition Transcript	2/19/2016			

Exhibit 2

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February 16, 2016

BY FEDERAL EXPRESS
AND E-MAIL TO kmcomeau@jonesday.com

Kevin M. Comeau, Esquire
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113

Re: Federal Trade Commission, et al. v. Penn State Hershey Medical Center, et al.
Case No. 1:15-cv-2362 (M.D. Pa.)

Dear Mr. Comeau:

As you are aware, we represent WellSpan Health, WellSpan York Hospital, and Good Samaritan Hospital (collectively, "WellSpan") in connection with the non-party subpoenas issued by Penn State Hershey Medical Center and Pinnacle Health System (the "Defendants") to WellSpan in the above-captioned matter (collectively, the "Subpoenas"). This response is produced in response to the Subpoenas, and, as we previously discussed, includes documents relating only to York Hospital, Good Samaritan Hospital, and Ephrata Community Hospital.

This will confirm, with thanks, the Defendants' agreement to extend through today the deadline for WellSpan to respond to the Subpoenas, including WellSpan's deadline to move to quash or modify, serve objections, or otherwise respond to the Subpoenas. In accordance with the Federal Rules of Civil Procedure and any applicable Local Rules for the United States District Court for the Middle District of Pennsylvania (collectively, the "Rules"), WellSpan sets forth below its objections and responses to the Subpoenas. WellSpan reserves the right to supplement these objections insofar as supplementation is allowed or required under the Rules and/or assert additional objections to the Subpoenas.

Further, in making its responses, WellSpan does not in any way waive or intend to waive, but to the contrary, intends to reserve: (a) all questions as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose, at trial or hearing in this case or in any related or subsequent action or proceeding, of any document produced hereunder or the subject matter thereof; (b) the right to object on any ground to the use of documents produced hereunder or the subject matter thereof at any trial or hearing in this case or in any related or subsequent action or proceeding; (c) the right to object on any ground at any time to a demand for further responses, document production, or appearances; and (d) the right to revise, supplement, correct, or add to these objections at any time.

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GENERAL OBJECTIONS TO SUBPOENAS

WellSpan generally objects to the Subpoenas as follows:

1. WellSpan objects to the definition of "WellSpan Health," "WellSpan York Hospital," "Good Samaritan Hospital," "you," and "your" because, in purporting to include all "divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives," it renders each and every request overly broad and unduly burdensome. WellSpan responds to the Subpoenas only on its own behalf, and WellSpan disclaims any obligation to produce documents maintained by any other legal entity. The production of any documents by WellSpan that may not be maintained in WellSpan's business records does not constitute an admission as to WellSpan's relationship with or involvement of any other company or entity.

2. WellSpan objects to the Subpoenas to the extent they seek or require WellSpan to produce documents or provide information not within its possession, custody, or control. WellSpan will not produce any documents or provide any information in the possession, custody, or control of any third party.

3. WellSpan objects to the Subpoenas to the extent Defendants have failed to take reasonable steps to avoid imposing undue burden or expense on WellSpan, as required by Fed. R. Civ. P. 45(d)(1). WellSpan reserves all rights it has to seek reimbursement of its reasonable expenses and costs (including attorneys' fees) incurred in responding to the Subpoenas.

4. WellSpan objects to the scope of the Subpoenas to the extent they are overly broad and seek documents that are not relevant to the parties' claims or defenses. WellSpan further objects to the scope of the Subpoenas to the extent they seek documents that are not proportional to the needs of the case as required by Fed. R. Civ. P. 26(b)(1).

5. WellSpan objects to the Subpoenas to the extent compliance with them would impose an unreasonable annoyance, embarrassment, oppression, expense, and/or burden on WellSpan.

6. WellSpan objects to the Subpoenas to the extent they seek production of documents that are already in Defendants' possession, custody, or control, that are publicly available, that are equally available from other parties, or that are duplicative of documents already produced in the litigation.

7. WellSpan objects to the Subpoenas to the extent they seek information that is obtainable from some other source that is more convenient, less burdensome, or less expensive than from WellSpan.

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8. WellSpan objects to the Subpoenas to the extent they require the production of electronically stored information from sources that are not reasonably accessible to WellSpan because of undue burden or cost.

9. WellSpan objects to the Subpoenas to the extent they call for the production of documents that relate to or contain proprietary or confidential business information, trade secrets, or competitively sensitive information belonging to WellSpan. Any documents produced by WellSpan should be considered confidential in accordance with the Protective Order entered in this case and not filed in the public record.

10. WellSpan objects to the Subpoenas to the extent they seek documents subject to third party confidentiality agreements that cannot be produced without agreement of those entities.

11. WellSpan objects to the Subpoenas to the extent they seek production of documents protected by the attorney-client privilege, the work-product privilege, the joint defense or common interest privilege, the self-critical analysis privilege, the business strategy privilege, or any other privilege, immunity, or other protection against disclosure. The inadvertent production of any material protected by the attorney-client privilege, the work-product privilege or any other applicable privilege, immunity, or protection from disclosure is not intended and should not be construed to constitute a waiver of any rights or privileges of WellSpan, and WellSpan reserves the right to demand that the parties return any such document, and all copies thereof, and that the parties destroy any material that contain information derived from any such document. WellSpan also reserves the right to assert all applicable privileges and protections from production.

12. WellSpan objects to the Subpoenas to the extent they request "any" or "all" documents, or documents "relating to" various topics, as vague, ambiguous, overly broad, and unduly burdensome.

13. WellSpan objects to the Definitions because the language of and defined terms incorporated into the Requests render each and every Request vague, ambiguous, overly broad, and unduly burdensome.

14. WellSpan objects to the Instructions to the extent they purport to impose obligations on WellSpan broader than those imposed by the applicable Rules, discovery procedures, or Court orders.

15. WellSpan objects to Instructions 1 and 12 purporting to require WellSpan to identify documents responsive to the Subpoenas not within its possession, custody, or control because this Instruction would impose an undue expense and burden on WellSpan.

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16. WellSpan objects to Instruction 3 purporting to require WellSpan to identify documents responsive to the Subpoenas that have been lost or destroyed because this Instruction would impose an undue expense and burden on WellSpan.

17. WellSpan objects to producing a privilege log of any document redacted or withheld from production on the basis of privilege as described in Instructions 4 and 5 because requiring a privilege log, particularly given the short time period WellSpan has to produce documents, is burdensome, costly, and unreasonable.

18. WellSpan objects to Instructions 18 and 19 purporting to specify the form of production of documents because the requested form would impose an undue burden and expense on WellSpan. WellSpan will produce documents in the form agreed to with counsel for Defendants.

19. WellSpan assumes no duty to supplement its responses except to the extent required by the applicable Rules.

20. WellSpan incorporates herein any objections asserted by any other party (if any) to the Subpoenas.

RESPONSES TO SUBPOENAS

Subject to and without waiving the foregoing general objections, under Fed. R. Civ. P. 45(d)(2)(B), WellSpan responds to the Requests for Production identified in the Subpoenas as follows:

1. All documents relating to any internal communications or communications between you, or anyone acting on your behalf, and any other person, including but not limited to any person employed by or acting on behalf of the FTC, Pennsylvania, or any other federal or state government agency or personnel, relating to the Proposed Transaction, any government investigation of the Proposed Transaction, or This Litigation.

RESPONSE: In addition to documents produced by WellSpan in response to discovery requests by the Federal Trade Commission, see WS 0001-0005.

2. Documents in machine-readable database format sufficient to show patient discharge data from your hospital since 2012, including, but not limited to, (a) the date of discharge; (b) length of stay; (c) relevant procedure code; (d) diagnosis-related group (DRG) code; (e) admitting physician ID; (f) attending physician ID; (g) primary payor; (h) primary payor plan; (i) payment received from patient; (j) payment received from primary payor; (k) payment received from additional payors; (l) billed amount; (m) source of patient admission; (n) patient sex; (o) patient age; and (p) patient zip code information.

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RESPONSE: See documents produced by WellSpan in response to discovery requests by the Federal Trade Commission.

3. All documents relating to competition for the provision of General Acute Care services in the Relevant Area, including but not limited to market studies, forecasts and surveys and all other documents relating to: (a) the market share, market power or competitive positions of Hershey and Pinnacle; (b) the relative strength and/or weaknesses of companies providing General Acute Care services in the Relevant Area; (c) attempts to gain or retain market share as related to individual patients, contracts with health plans, or physicians' patient admissions; (d) any actual or potential effect on the supply, demand, cost or price of General Acute Care services in the Relevant Area as a result of competition from any other source; (e) patient or consumer opinions of particular General Acute Care service providers in the Relevant Area; and (f) whether you or any other hospital or other medical service provider has added, expanded, discontinued, or reduced the provision of any General Acute Care service in the Relevant Area.

RESPONSE: In addition to documents produced by WellSpan in response to discovery requests by the Federal Trade Commission, see WS 0006-0148.

4. Documents sufficient to identify the geographic service area(s) and the criteria you use to define the geographic service area(s) for your General Acute Care hospitals or other General Acute Care service locations in the Relevant Area.

RESPONSE: See documents produced by WellSpan in response to discovery requests by the Federal Trade Commission.

5. All documents related to the Proposed Transaction, including, but not limited to: its potential effect on competition, competitors, prices, patients, quality, and negotiations for health plan contracts; and its potential cost savings, quality improvements, economies, and other benefits of whatever kind.

RESPONSE: See documents produced by WellSpan in response to discovery requests by the Federal Trade Commission.

6. All documents related to any other Affiliation involving you or other providers of General Acute Care services in the Relevant Area, including but not limited to Geisinger Health System's 2014 acquisition of Holy Spirit Hospital, University of Pennsylvania Health System's affiliation with Lancaster General Health System, Community Health System's affiliation with Carlisle Regional Medical Center, WellSpan Health's affiliations with Good Samaritan Hospital and Ephrata Community Medical Center, and WellSpan Health's potential affiliation involving Johns Hopkins Medicine, including but not limited to documents relating to: the actual or

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Page 6

potential effect on competition, competitors, prices, patients, and negotiations for health plan contracts; and the actual or potential cost savings, quality improvements, economics, or other benefits of whatever kind.

RESPONSE: In addition to documents produced by WellSpan in response to discovery requests by the Federal Trade Commission, see WS 0149-0192.

7. All documents relating to your, or any other entity's, plans or strategies to enter, expand any General Acute Care service; construct, add, or substantially refurbish facilities; and locate or add new, expanded, or refurbished inpatient, outpatient, or physician services or facilities in the Relevant Area.

RESPONSE: See documents produced by WellSpan in response to discovery requests by the Federal Trade Commission.

8. For each hospital or facility, by nursing or service unit, documents sufficient to show the number of licensed beds, staffed beds, available beds, and shelled or unused space for beds at your General Acute Care hospital(s) or other General Acute Care service location(s) in the Relevant Area.

RESPONSE: See the publicly available statistics available on the Pennsylvania Department of Health's website (<http://www.health.pa.gov/Pages/default.aspx>).

9. Documents sufficient to show the average census of patients at your General Acute Care hospital(s) or other General Acute Care service location(s) in the Relevant Area on a daily basis for each hospital or facility by nursing or service unit.

RESPONSE: See the publicly available statistics available on the Pennsylvania Department of Health's website (<http://www.health.pa.gov/Pages/default.aspx>).

10. Documents sufficient to show the General Acute Care services offered by your hospital or other health care service locations in the Relevant Area.

RESPONSE: See WellSpan's website (<https://www.wellspan.org/>) and documents produced by WellSpan in response to discovery requests by the Federal Trade Commission.

11. Documents sufficient to show any corporate relationship or affiliation you have with any other General Acute Care service provider in the Relevant Area.

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RESPONSE: In addition to documents produced by WellSpan in response to discovery requests by the Federal Trade Commission, see WS 0193.

12. Documents sufficient to show your marketing or advertising efforts, strategies, or plans in the Relevant Area.

RESPONSE: See documents produced by WellSpan in response to discovery requests by the Federal Trade Commission.

13. Documents related to, and your plans or strategies regarding or participation in, high-deductible health plan products, narrow network health plan products, accountable care organizations or products, plans involving hard or soft steering provisions, tiered health plan products, and risk-sharing with insurers.

RESPONSE: See documents produced by WellSpan in response to discovery requests by the Federal Trade Commission.

14. All documents related to your plans and strategies with respect to negotiations with health plans.

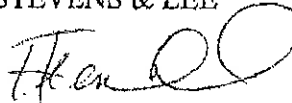
RESPONSE: See documents produced by WellSpan in response to discovery requests by the Federal Trade Commission.

15. All documents regarding patient transfers to Hershey Medical Center or any other General Acute Care hospital in the Relevant Area that were requested but denied, including any reason given for the denial, the disposition of that patient, where the patient was ultimately treated, diagnosis, and the severity of the patient's condition.

RESPONSE: WellSpan does not possess any documents responsive to this request.

Very truly yours,

STEVENS & LEE



Harriet Franklin

cc: Glen D. Moffett, Esquire, Senior Vice President and General Counsel
Theodore Zang, Esquire, Federal Trade Commission


CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a copy of the foregoing Response to Defendants' Subpoenas directed to WellSpan Health, WellSpan York Hospital, and Good Samaritan Hospital to be served by email and by Federal Express upon the following:

Kevin M. Comeau, Esquire
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
kmcomeau@jonesday.com

Theodore Zang, Esquire
Federal Trade Commission
One Bowling Green, Suite 318
New York, NY 10004
tzang@ftc.gov

STEVENS & LEE, P.C.



Harriet Franklin
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620 Freedom Business Center Drive
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Telephone: (610) 205-6014
Facsimile: (610) 371-7969
E-mail: *hf@stevenslee.com*

Dated: February 16, 2016

Exhibit 3

Franklin, Harriet

From: Franklin, Harriet
Sent: Friday, February 26, 2016 3:12 PM
To: Kevin M Comeau
Cc: Nagley, Jared; Stein, Gerald A.; Wertz, Tracy W.; aschwartz@attorneygeneral.gov; Adrian Wager-Zito; Christopher Thatch
Subject: RE: FTC, et al., v. Penn State Hershey Med. Ctr. // Declaration of Dr. Kevin Mosser

Kevin: Dr. Mosser does object and requests that you not disclose his Declaration with in-house counsel. Thank you. Harriet

Harriet Franklin
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From: Kevin M Comeau [<mailto:kmcomeau@JonesDay.com>]
Sent: Tuesday, February 23, 2016 8:00 PM
To: Franklin, Harriet
Cc: Nagley, Jared; Stein, Gerald A.; Wertz, Tracy W.; aschwartz@attorneygeneral.gov; Adrian Wager-Zito; Christopher Thatch
Subject: FTC, et al., v. Penn State Hershey Med. Ctr. // Declaration of Dr. Kevin Mosser

Harriet,

Following up on our recent conversation, I write to give you notice pursuant to the Protective Order entered by the District Court in *FTC, et al., v. Penn State Hershey Medical Center, et al.* (attached below), that we intend to disclose to our clients' designated in-house counsel the November 10, 2015, declaration of your client, Dr. Kevin Mosser, a copy of which I have provided below. We intend to share the declaration with our designated in-house counsel to allow them to participate in preparing their defense with the benefit of important third party evidence on which the Plaintiffs intend to rely.

In accordance with the Protective Order, I have also attached copies of the February 1, 2016, declarations signed by our designated in-house counsel and their assistants: Chris Markley and Jennifer Woodford, for Pinnacle, and Mark Faulkner and Mandy Houser, for Hershey. I have also attached copies of additional declarations from Markley and Faulkner provided in response to the Magistrate Judge's recent order related to the disclosure of witness identities.

Please let us know if your client will agree to disclose the declaration. If I have not heard from you within 10 days, we will share the Declaration with our designated in-house counsel.

I am available to discuss at any time.
Thanks,
Kevin

Kevin M. Comeau
Associate

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=====

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=====

Exhibit 4

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March 2, 2016

VIA ELECTRONIC MAIL

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Aaron Schwartz, Esquire
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Strawberry Square, 14th Floor
Harrisburg, PA 17120

Re: *FTC, et al., v. Penn State Hershey Med. Ctr.*,
U.S.D.C., M.D. Pa. No. 1:15-cv-02362-JEJ

Dear Counsel of Record:

This firm represents Dr. Kevin Mosser in connection with his deposition taken in the above-referenced matter on February 19, 2016. Pursuant to the Protective Order entered in this case and the agreement of counsel reflected in the transcript of the deposition, Dr. Mosser designates the following pages and lines "CONFIDENTIAL":

37:13-69:22
72:6-85:19
94:8-94:19
95:9-96:5
96:16-98:5
101:18-102:8
103:22-104:17
109:3-110:12

Given that Dr. Mosser is out of the country on a personal vacation, as discussed at the deposition, we reserve the right to supplement or amend these designations upon his return.

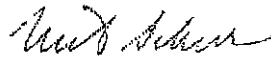
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STEVENS & LEE
LAWYERS & CONSULTANTS

Counsel of Record
March 2, 2016
Page 2

Very truly yours,

STEVENS & LEE



Neil C. Schur

cc: Harriet Franklin, Esquire

Exhibit 5

DECLARATION OF KEVIN MOSSER

COMMONWEALTH OF PENNSYLVANIA :
: COUNTY OF LANCASTER :


I, Kevin Mosser, being duly sworn, depose and make the following statement:

1. I am a licensed physician presently employed as the President and Chief Executive Officer of WellSpan Health (“WellSpan”).
2. I respectfully submit this Affidavit in support of WellSpan’s Motion for *In Camera* Treatment of Certain Designated Hearing Exhibits and Deposition Testimony (“Motion”).
3. The information contained in the documents listed in Exhibit 1 to the Motion other than DX 1061 (“Subject Documents”), including designated portions of my deposition testimony on February 19, 2016, as set forth in Exhibit 4 to the Motion, and provided to the Court for *in camera* review, is secret, commercially sensitive, and material to WellSpan’s current and prospective business, particularly with regard to planning and business strategy, and analysis of providers and payors in the region.
4. Each of the Subject Documents has been maintained internally by WellSpan in a confidential manner, only being shared with those individuals requiring knowledge of the information contained within the document.
5. The information in the Subject Documents was not made available to WellSpan’s competitors or other outside persons,

6. The Subject Documents contain commercially proprietary and confidential information regarding WellSpan's business planning and strategy, as well as analysis of providers and payors in the region.
7. All of this information is held in strict confidence by WellSpan.
8. If such information were publicly disclosed, WellSpan will suffer clearly defined, serious competitive harm because its competitors could use this non-public information to their advantage and nullify the competitive advantages gained by WellSpan.
9. WellSpan's request that *in camera* treatment for the Subject Documents be maintained for seven (7) years is reasonable in light of the commercial realities of the healthcare industry.
10. Planning and business strategies for healthcare services and analysis of the healthcare providers and payors in the region are typically long-term in nature.
11. It is uncertain when the Subject Documents will no longer reflect current analysis, strategy and planning.
12. Even disclosure of business strategies and plans no longer in force, which nonetheless may reflect confidential analysis of the providers and payors in the region, creates an unreasonable and unnecessary risk of competitive harm to WellSpan such that *in camera* treatment should extend for a period of seven (7) years, a reasonable estimate of the minimum length of time for the Subject Documents (including the designated deposition testimony) to become outdated and irrelevant.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 6th day of May, 2016.



KEVIN MOSSER

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2016, I delivered via overnight courier and electronic mail delivery a copy of the foregoing Non-Party WellSpan's Motion for *In Camera* Treatment of Certain Designated Hearing Exhibits and Deposition Testimony and proposed Order to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
oyalj@ftc.gov

I hereby certify that on May 9, 2016, I served via ECF and electronic mail delivery a copy of the foregoing Non-Party WellSpan's Motion for *In Camera* Treatment of Certain Designated Hearing Exhibits and proposed Order on:

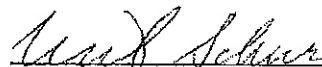
Christopher N. Thatch, Esquire
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
cthatch@JonesDay.com

Geralynn Trujillo, Esquire
Federal Trade Commission
One Bowling Green, Suite 318
New York, NY 10004
gtrujillo@ftc.gov

I hereby certify that on May 9, 2016, I served via overnight courier and electronic mail delivery a copy of the foregoing Non-Party WellSpan's Motion for *In Camera* Treatment of Certain Designated Hearing Exhibits and proposed Order on:

Aaron Schwartz, Esquire
Deputy Attorney General
Commonwealth of Pennsylvania
Office of the Attorney General
Antitrust Section
Strawberry Square, 14th Floor
Harrisburg, PA 17120
aschwartz@attorneygeneral.gov

Date: May 9, 2016


Neil C. Schur

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of The Penn State Hershey Medical Center, a corporation, and PinnacleHealth System, a corporation.)))))))	Docket No. 9368 PUBLIC
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**NON-PARTY WELLSPAN HEALTH'S MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR *IN CAMERA* TREATMENT OF CERTAIN DESIGNATED HEARING
EXHIBITS AND DEPOSITION TESTIMONY**

I. Introduction

Non-Party WellSpan Health ("WellSpan") respectfully submits this Memorandum of Law in support of its motion for *in camera* treatment of certain hearing exhibits and deposition testimony that either the Federal Trade Commission ("FTC") or Respondents The Penn State Hershey Medical Center or PinnacleHealth System (collectively, "Respondent") have designated as exhibits for possible introduction in the administrative hearing in this matter, scheduled to commence on May 17, 2016.

A listing and description of the documents and testimony for which WellSpan seeks *in camera* treatment ("Subject Documents") is attached to WellSpan's Motion as Exhibit 1.¹ (The documents themselves are submitted in a separate version of Exhibit 1 to the Court only, for *in camera* review).² Each of the Subject Documents produced to the FTC or Respondent is confidential material pursuant to Sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f), 57b-2 (2012), and/or the December 8, 2015 Protective Order Governing

¹ WellSpan does not seek *in camera* treatment of DX 1061 or the portions of the transcript of the deposition of Kevin Mosser that were not designated confidential. See Exhibit 4 to WellSpan's Motion.

² WellSpan does not concede that all of the exhibits listed thereon and provided to the Court are proper or admissible exhibits. WellSpan preserves its right to object to the introduction of these exhibits on this and any other proper basis and does not waive any such objections by solely focusing on confidentiality herein.

Discovery Material entered by the Court (“Protective Order”).³ The information contained in these produced Subject Documents is secret, commercially sensitive, and material to WellSpan’s current and prospective business, particularly with regard to planning and business strategy and evaluation of providers and payors in the region. Its disclosure will result in clearly defined, serious competitive harm to WellSpan. (Exhibit 5 to WellSpan’s Motion, Declaration of Kevin Mosser (“Mosser Decl.”), at ¶¶ 3-8.)

In addition, WellSpan seeks *in camera* treatment of the sworn Declaration of its President and Chief Executive Officer, Dr. Kevin Mosser. The Declaration is included in the version of Exhibit 1 provided to the Court. It, too, contains information that is secret, commercially sensitive, and material to WellSpan’s current and prospective business, particularly with regard to planning and business strategy, and, as a result, its disclosure will result in clearly defined, serious competitive harm to WellSpan. (Mosser Decl. ¶¶ 3-8.) On February 26, 2016, WellSpan objected to the disclosure of a Declaration of Kevin Mosser, obtained by the FTC, to Respondent’s in-house counsel. (See Electronic mail communication from Harriet Franklin, Esquire to Kevin M. Comeau, Esquire, dated February 26, 2016, attached hereto as Exhibit 3.)

³ WellSpan’s document productions to the FTC predated the issuance of the Protective Order. In response to a subpoena served by the FTC in connection with its investigation, WellSpan produced 1,846 pages on July 17, 2015, 2,065 pages on July 31, 2015, and 67 pages on August 24, 2015. Spreadsheets were produced in native format and counted as a single page each. The FTC subsequently produced those documents to Respondent on the condition that they would be treated as confidential material. These documents were entitled to confidential treatment pursuant to Sections 6(f) and 21 of the Federal Trade Commission Act. See 15 U.S.C. §§ 46(f), 57b-2 (2012). The Protective Order provides that materials entitled to confidential treatment under the Federal Trade Commission Act are treated as confidential material under the Protective Order. (Protective Order ¶ 2.)

Subsequently, in response to subpoenas served by Respondent, WellSpan objected: “WellSpan objects to the Subpoenas to the extent they call for the production of documents that relate to or contain proprietary or confidential business information, trade secrets, or competitively sensitive information belonging to WellSpan. Any documents produced by WellSpan should be considered confidential in accordance with the Protective Order entered in this case and not filed in the public record.” (See WellSpan’s Objections to Respondent’s Subpoenas, dated February 16, 2016, Exhibit 2 to WellSpan’s Motion, ¶ 9.) WellSpan produced 193 pages on February 16, 2016. Spreadsheets were produced in native format and counted as a single page each.

Finally, WellSpan seeks *in camera* treatment of certain portions of Dr. Mosser's deposition testimony. Respondent deposed Dr. Mosser on February 19, 2016. A copy of his deposition transcript is included in the version of Exhibit 1 submitted to the Court. On March 2, 2016, WellSpan designated certain portions of that transcript confidential pursuant to the Protective Order and the agreement of counsel reflected in the transcript. A true and correct copy of the undersigned's letter dated March 2, 2016, making such designations is attached to WellSpan's motion as Exhibit 4. Like the produced documents, the designated portions of Dr. Mosser's testimony contain information that is secret, commercially sensitive, and material to WellSpan's current and prospective business, particularly with regard to planning and business strategy, and its disclosure will result in clearly defined, serious competitive harm to WellSpan. (Mosser Decl. ¶¶ 3-8.)

As a result, WellSpan respectfully requests that the Administrative Law Judge enter an Order pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b), granting *in camera* treatment for no less than seven (7) years, to the Subject Documents listed in Exhibit 1 attached to WellSpan's Motion and the proposed Order submitted herewith, except as set forth in n.1, *supra*.

II. Standard for In Camera Treatment

Materials merit *in camera* treatment when their public disclosure "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). Such serious injury can be established by showing that the information at issue 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 the Matter of Bristol Meyers Co.*, 90 F.T.C. 455, 456 (1977).

The following factors should be weighed in considering both secrecy and materiality:

(1) the extent to which the information is known outside the applicant's business; (2) the extent to which the information is known by employees and others involved in the applicant's business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *In the Matter of Bristol Meyers Co.*, 90 F.T.C. at 456.

A showing of injury may consist of extrinsic evidence or, in certain instances, may be inferred from the nature of the documents themselves. *In the Matter of E.I. Dupont de Nemours & Co.*, 97 F.T.C. 116 (1981). Administrative law judges have broad discretion in applying these factors to determine whether information warrants *in camera* treatment. See *In re General Foods Corp.*, 95 F.T.C. 352 (1980). Moreover, the Commission has stated that a request for *in camera* treatment by a non-party to the FTC proceeding (such as WellSpan) should be given "special solicitude." *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714 (1967) ("[P]etitioner's plea warrants special solicitude coming as it does from a third-party bystander in no way involved in the proceedings whose records, if *in camera* treatment is denied, will be open to the scrutiny of its competitors"); accord *Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984) (requests for *in camera* treatment by third parties should be given special solicitude because, as a policy matter, such treatment encourages the third party to cooperate with future adjudicative discovery requests).

III. The Subject Documents Meet the Standard for In Camera Treatment.

Each of the Subject Documents has been maintained internally by WellSpan in a confidential manner, only being shared with those individuals requiring knowledge of the

information contained within the document. (Mosser Decl. ¶ 4.) The information was not made available to WellSpan's competitors or other outside persons. (Mosser Decl. ¶ 5.) As such, when legally compelled to produce the information under subpoena, the Subject Documents constitute confidential material under Sections 6(f) and 21 of the Federal Trade Commission Act, *see* 15 U.S.C. §§ 46(f), 57b-2 (2012), and/or the Protective Order.

WellSpan respectfully submits that *in camera* treatment is warranted for the Subject Documents (including the designated deposition testimony) because: (1) WellSpan will suffer clearly defined, serious competitive harm if the Subject Documents are disclosed to the public; (2) the information contained in the Subject Documents is secret; and (3) the risk of harm is not outweighed by the importance of the information to the matter decided by the Commission.

The Subject Documents contain commercially proprietary and confidential information regarding WellSpan's planning and business strategy. (Mosser Decl. ¶ 6.) All of this information is held in strict confidence by WellSpan. (Mosser Decl. ¶¶ 4, 5, 7; *see also* Exhibit 3 (WellSpan objecting to disclosure of the confidential Declaration of Kevin Mosser (*see* Exhibit 1) to Respondent's designated in-house counsel.)) If the information contained in the Subject Documents and deposition testimony were publicly disclosed, WellSpan will suffer clearly defined, serious competitive harm because its competitors could use this non-public information to their advantage and nullify the competitive advantages gained by WellSpan. (Mosser Decl. ¶ 8.)

WellSpan does not seek *in camera* treatment for hundreds of documents. *Cf. In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157, at *4-*5 (Nov. 22, 2000). Its request is focused on documents that contain confidential business plans, strategies and analysis, such as internal presentations, assessments, and market share overviews. Similarly, WellSpan does not

seek *in camera* treatment for the entire deposition of its President and Chief Executive Officer but has instead designated only limited portions of the deposition testimony confidential, *see* Exhibit 4 to PHEAA's Motion, and asks the Court to shield only those select excerpts from public disclosure, as they, too, contain highly confidential information regarding WellSpan's competitive analyses, business plans and strategies.

Moreover, as a non-party seeking *in camera* treatment for its confidential business information, WellSpan's request should be treated with "special solicitude." *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714; *Kaiser Aluminum*, 103 F.T.C. 500. At great expense, WellSpan has cooperated with the discovery demands of both parties to this case, producing both thousands of pages of documents and a witness for deposition (who was also separately examined in connection with the FTC's investigation of the facts of this matter and provided a sworn declaration). The Subject Documents and thousands of pages of other documents have been made available – at substantial cost to WellSpan – for use by the FTC and Respondent in these proceedings, in accordance with the terms of the Protective Order.

Disclosing the Subject Documents containing WellSpan's highly confidential business information now will not materially promote the resolution of this matter, nor will these documents measurably increase the public's understanding of these proceedings. The balance of interests clearly favors *in camera* treatment for the Subject Documents. *See In re Bristol-Myers*, 90 F.T.C. at 456.

IV. *In Camera* Treatment of the Documents Should Extend For a Seven-Year Period.

WellSpan's request that *in camera* treatment for the Subject Documents be maintained for seven (7) years is reasonable in light of the commercial realities of the health care industry. (Mosser Decl. ¶ 9.) Reasonable periods of *in camera* treatment encourage non-parties to

cooperate with future discovery requests in adjudicative proceedings. *Kaiser Aluminum*, 103 F.T.C. 500 (extending period of *in camera* treatment for non-party's sensitive documents detailing sales of specific lines of refractories and related products).

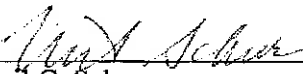
Planning and business strategies for healthcare services and analysis of the healthcare providers and payors in the region are typically long-term in nature. (Mosser Decl. ¶ 10.) It is uncertain when the documents will no longer reflect current analysis, strategy and planning. (Mosser Decl. ¶ 11.) Even disclosure of business strategies and plans no longer in force, which nonetheless may reflect confidential analysis of the providers and payors in the region, creates an unreasonable and unnecessary risk of competitive harm to WellSpan such that *in camera* treatment should extend for a period of seven (7) years, a reasonable estimate of the minimum length of time for the Subject Documents (including the designated deposition testimony) to become outdated and irrelevant. (Mosser Decl. ¶ 12.)

V. Conclusion

WellSpan, in endeavoring to remain competitive, has created certain highly sensitive documents relating to its material and confidential business plans and strategies, as well as its material and confidential analysis of the healthcare providers and payors in the region. Disclosure of the Subject Documents would result in a clearly defined, serious competitive injury to WellSpan. Accordingly, for the reasons set forth above and in the Declaration of Dr. Kevin Mosser, Exhibit 5 to WellSpan's Motion, WellSpan respectfully requests that this Court grant its motion directing *in camera* treatment for the Subject Documents.

Dated: May 9, 2016

STEVENS & LEE, P.C.

By 
Neil C. Schur
1818 Market Street, 29th Floor
Philadelphia, Pennsylvania 19103
(215) 751-1944
ncsc@stevenslee.com

*Counsel for Non-Party WellSpan Health
and Dr. Kevin Mosser*

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of The Penn State Hershey
Medical Center, a corporation, and
PinnacleHealth System, a corporation.**

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Docket No. 9368

PUBLIC

ORDER

Upon consideration of Non-Party WellSpan Health's Motion for *In Camera* Treatment of Certain Designated Hearing Exhibits and Deposition Testimony, and any opposition thereto, it is **HEREBY ORDERED** that the motion is **GRANTED**.

The documents identified in Exhibit 1 hereto, with the exception of DX 1061, and the deposition testimony of Dr. Kevin Mosser designated in Exhibit 2 hereto, shall be afforded *in camera* treatment pursuant to Rule 3.45(b) of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 3.45(b) for seven (7) years from the date of this Order.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: May __, 2016

EXHIBIT 1

ATTACHMENT A

Exhibit No.	Description	Date	Begin Bates	End Bates
PX00702	Declaration: Kevin Mosser (WellSpan)	11/10/2015	PX00702-001	PX00702-005
PX00782	WellSpan Presentation: Good Samaritan Health System (GSH) Transaction.	11/21/2014	WS SDT001458	WS SDT001505
PX00815	WellSpan Presentation: WellSpan Health / Good Samaritan Health System Strategic Intent to Affiliate."	1/13/2014	WS SDT000482	WS SDT000528
PX00816	WellSpan Presentation: Year-End Progress - "Green Book" Report.	00/00/0000	WS SDT000575	WS SDT000615
PX01216	Kevin Mosser Deposition Transcript	2/19/2016	PX01216-001	PX01216-136
PX01577	Presentation: Lancaster County TIA/Stroke Market Assessment December 2015	00/00/0000	WS0048	WS0052
PX01576	Presentation: Good Samaritan Health System (GSH) Transaction" to WellSpan Health Board of Directors	11/21/2014	WS SDT000527	WS SDT000574
PX01581	Presentation: Lancaster County Primary Area Inpatient Discharges & Outpatient Procedures Service Volume and Market Share Overview January 2016	00/00/0000	WS0017	WS0026
PX01582	Presentation: Lebanon County Inpatient Discharges & Outpatient Procedures Service Volume and Market Share Overview January 2016	00/00/0000	WS0061	WS0071
PX01583	Presentation: Lebanon County TIA/Stroke Market Assessment December 2015	12/00/2015	WS0096	WS0099
PX01584	Presentation: York & Adams Counties TIA/Stroke Market Assessment December 2015	12/00/2015	WS0133	WS0140

ATTACHMENT A

Exhibit Number	Title	Date	Document Id/Produced Doc Label - BegDoc	Document Id/Produced Doc Label - EndDoc	Admissibility
DX0001	Declaration of Dr. Kerin Mosser, M.D.	10/28/2015	FTC-PROD-0000837	FTC-PROD-0000841	
DX0728	Lancaster County Primary Service Area Inpatient & Outpatient Procedures Service Volume and Market Share Overview January 2016	1/1/2016	WS 0017	WS 0026	
DX0729	Lebanon County Primary Service Area Inpatient & Outpatient Procedures Service Volume and Market Share Overview January 2016	1/1/2016	WS 0061	WS 0071	
DX0730	Lebanon County General Surgery Market Assessment September 2015	9/1/2015	WS 0076	WS 0079	
DX0731	Lebanon County Thoracic Surgery Market Assessment October 2015	10/1/2015	WS 0093	WS 0095	
DX0732	WellSpan Service Area Pediatric ENT Surgery Outmigration to PSU Hershey September 2015	9/1/2015	WS 0107	WS 0109	
DX0733	WellSpan Service Area Pediatric Surgery/Market Assessment September 2015	9/1/2015	WS 0110	WS 0116	
DX0734	WellSpan Service Area Pediatric Inpatient Services Outmigration to PSU Hershey September 2015	9/1/2015	WS 0117	WS 0118	
DX0735	PSU Hershey Inpatient Admissions Originating from WellSpan Primary Service Area - Age 0-17	00/00/0000	WS 0127	WS 0128	
DX0736	WellSpan Health 2015 Budget & Five Year Projections	5/30/2014	WS SDT 000398	WS SDT 000447	
DX0737	WellSpan Health/Good Samaritan Health System Strategic Intent to Affiliate	1/13/2014	WS SDT 000482	WS SDT 000526	
DX0738	WellSpan PCI Business Plan 1.5-1.4	1/15/2014	WS SDT 000604	WS SDT 000623	
DX0739	Good Samaritan WellSpan Board of Directors 9.27-13	9/27/2013	WS SDT 001326	WS SDT 001376	
DX0740	Email from D. Regan to T. Norton re FTC Requested Information	7/14/2015	WS SDT 001842	WS SDT 001844	
DX0848	Master Collaboration Agreement By and Among WellSpan Health and Johns Hopkins University	00/00/0000	WS 0149	WS 0172	
DX0851	Good Samaritan Health System (GSH) Transaction, WellSpan Health Board of Directors 11/21/14	11/21/2014	WS SDT 000527	WS SDT 000574	
DX1049	WellSpan Health/ Good Samaritan Health System - Strategic Intent to Affiliate (Final Draft 1/13/14)	1/13/2014	GOODSAM-FTC-000267	GOODSAM-FTC-000314	
DX1050	The Good Samaritan Hospital - Geographic Service Area	00/00/0000	GOODSAM-FTC-000695	GOODSAM-FTC-000697	
DX1051	The Good Samaritan Hospital - List of Competitors	00/00/0000	GOODSAM-FTC-000698	GOODSAM-FTC-000698	
DX1052	Good Samaritan Health System - Exploring and Evaluating the Benefits and Challenges of Affiliation, Steering Committee Meeting #1, 1/30/13	1/30/2013	GOODSAM-FTC-000879	GOODSAM-FTC-000902	
DX1053	Good Samaritan Health System - Exploring and Evaluating the Benefits and Challenges of Affiliation, Steering Committee Meeting #2, 2/21/13	2/21/2013	GOODSAM-FTC-000903	GOODSAM-FTC-000928	
DX1054	Good Samaritan Health System - Exploring and Evaluating the Benefits and Challenges of Affiliation, Steering Committee Meeting #3, 3/21/13	3/21/2013	GOODSAM-FTC-000929	GOODSAM-FTC-000964	
DX1055	Good Samaritan Health System - Strategic Plan 2011-2014 Appendices, July 2011	00/07/2011	GOODSAM-FTC-005701	GOODSAM-FTC-005786	
DX1056	Good Samaritan Health System - 2011-2014 Strategic Plan Planning Assessment and Goals Summary	00/00/0000	GOODSAM-FTC-005839	GOODSAM-FTC-005850	
DX1057	Good Samaritan Health System - Action Plan: Program Development, 2013-2014	3/30/2014	GOODSAM-FTC-005851	GOODSAM-FTC-005854	
DX1058	Good Samaritan Hospital - Planning Committee of the Board of Trustees 10/13/14	10/13/2014	GOODSAM-FTC-010221	GOODSAM-FTC-010223	
DX1059	Good Samaritan Hospital - Planning Committee Presentation: Pediatrics/Pediatrics Update, Planning Committee	4/14/2014	GOODSAM-FTC-010300	GOODSAM-FTC-010300	
DX1060	Good Samaritan Hospital - Planning Committee Presentation: Setting the Context & Making the Case for Change, Leadership Development Institute, Spring 2015	00/00/2015	GOODSAM-FTC-012597	GOODSAM-FTC-012597	
DX1061	Central Penn Business Journal - The race for patients is on in Lebanon County	8/21/2015	GOODSAM-FTC-013628	GOODSAM-FTC-013630	
DX1577	WellSpan Year-End Progress Report 2014-2015	7/13/2015	WS SPT 000575	WS SPT 000615	
DX1654	Mosser Deposition Transcript	2/19/2016			

EXHIBIT 2

STEVENS & LEE
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March 2, 2016

VIA ELECTRONIC MAIL

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Aaron Schwartz, Esquire
Commonwealth of Pennsylvania
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Antitrust Section
Strawberry Square, 14th Floor
Harrisburg, PA 17120

Re: *FTC, et al., v. Penn State Hershey Med. Ctr.*,
U.S.D.C., M.D. Pa. No. 1:15-cv-02362-JEJ

Dear Counsel of Record:

This firm represents Dr. Kevin Mosser in connection with his deposition taken in the above-referenced matter on February 19, 2016. Pursuant to the Protective Order entered in this case and the agreement of counsel reflected in the transcript of the deposition, Dr. Mosser designates the following pages and lines "CONFIDENTIAL":

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72:6-85:19
94:8-94:19
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96:16-98:5
101:18-102:8
103:22-104:17
109:3-110:12

Given that Dr. Mosser is out of the country on a personal vacation, as discussed at the deposition, we reserve the right to supplement or amend these designations upon his return.

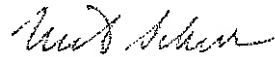
Philadelphia • Reading • Valley Forge • Allentown • Harrisburg • Lancaster • Scranton
Wilkes-Barre • Princeton • Charleston • New York • Wilmington
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STEVENS & LEE
LAWYERS & CONSULTANTS

Counsel of Record
March 2, 2016
Page 2

Very truly yours,

STEVENS & LEE



Neil C. Schur

cc: Harriet Franklin, Esquire