

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

and

STATE OF ILLINOIS

*Plaintiffs,*

v.

ADVOCATE HEALTH CARE NETWORK,

ADVOCATE HEALTH AND HOSPITALS CORP.,

and

NORTHSHORE UNIVERSITY HEALTHSYSTEM,

*Defendants.*

Case No.: 1:15-cv-11473

Judge Jorge L. Alonso

Mag. Judge Jeffrey Cole

**DEFENDANTS' MOTION TO SEAL DEFENDANTS' MOTION TO EXCLUDE THE  
TESTIMONY AND REPORT OF DR. STEVEN A. TENN, PH.D**

Defendants Advocate Health Care Network, Advocate Health and Hospitals Corp. (“**Advocate**”) and NorthShore University HealthSystem (“**NorthShore**”), (collectively, “**Defendants**”), respectfully move the Court pursuant to Rule 7(b) of the Federal Rules of Civil Procedure and Rules 5.8 and 26.2 of the Local Rules of the United States District Court for the Northern District of Illinois, for an order directing the Clerk of the Court to file under seal, until further order, Defendants’ Motion to Exclude the Testimony and Report of Dr. Steven A. Tenn, Ph.D (the “**Motion to Exclude**”) and all exhibits thereto.

On January 8, 2016, the Court entered the parties’ Agreed Confidentiality Order, that set forth two categories of designations—Confidential and Highly Confidential—to be used to protect

sensitive documents and testimony from disclosure. *See* Agreed Confidentiality Order, Dkt. No. 36 (“Confidentiality Order” or “Order”). These categories cover proprietary materials such as trade secrets, confidential research, technical, commercial, or financial information, pricing information and other non-public strategic materials. *Id.* ¶ 2. If materials are designated Confidential or Highly Confidential, they may not be shared outside of a narrowly defined number of individuals identified in the Order. *Id.* ¶ 5. Following entry of the Confidentiality Order, a number of third parties intervened seeking an Outside Counsel Only designation as well. *See, e.g.*, Third Party-Intervenors’ Motion to Amend the Agreed Confidentiality Order, Dkt. No. 81 (Jan. 27, 2016). On February 29th, Judge Cole granted the various intervenors’ motions. *See* Memorandum Opinion and Order, Dkt. No. 156.

Defendants Motion to Exclude the Testimony and Report of Dr. Steven A. Tenn, Ph.D cites to numerous documents that were designated as Highly Confidential, which themselves cite to materials designated Confidential and Highly Confidential. These documents include the Expert Report of Steven A. Tenn and Defendants’ own expert reports, and deposition transcripts, which are included as exhibits to Defendants’ Motion to Exclude. *See, e.g.*, Motion to Exclude at 5, 6. The expert reports themselves cite to sensitive information produced by the parties and sensitive business information from third party payers, and Defendants’ competitors. *See, e.g.*, Tenn Report (“This document Contains Highly Confidential Material”). Such competitively sensitive information is often protected from disclosure, and should remain so here. *See United States v. Sanford-Brown, Ltd.*, 788 F.3d 696, 714 (7th Cir. 2015) (granting motion to seal commercially sensitive information).

As such, Defendants respectfully request that the Court grant Defendants’ Motion to Seal and instruct the Clerk of the Court to keep the Defendants’ Opposition and accompanying exhibits under seal.

Dated: April 1, 2016

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 1, 2016 I caused a copy of the foregoing Defendants' Motion to Seal Defendants' Motion to Exclude the Testimony and Report of Dr. Steven A. Tenn, Ph.D to be filed and served on all counsel of record via the Court's electronic filing system.

/s/ Robert W. McCann  
Robert W. McCann