

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

EARLINE TOLSON,)
Administratrix of the Estate of)
Laranda Tolson and Next Friend of)
Darren Tolson and Shaykra Tolson,)

Plaintiff,)

v.)

BARNETT AND WILSON)
SURGICAL ASSOCIATES, P.A.,)
THOMAS P. BARNETT, M.D.,)
and PRISON HEALTH)
SERVICES, INC.,)

Defendants.)

C.A. No. 01C-05-040 HDR

Submitted: January 30, 2002

Decided: February 15, 2002

John S. Grady, Esq. of Grady & Hampton, P.A., Dover, Delaware, for Plaintiff.

John D. Balaguer, Esq. and Robert Karl Beste, III, Esq., of White and Williams, LLP, Wilmington, Delaware, for Defendant Prison Health Services, Inc.

Upon Defendant Prison Health Services, Inc.'s
Motion for Protective Order
GRANTED

RIDGELY, President Judge

O R D E R

This 15th day of February, 2002, it appears that:

(1) Defendant Prison Health Services, Inc. seeks a confidentiality order to protect information contained within the Prison Health Services (“PHS”) “General Policy and Procedure Manual for Prisons” (“Manual”) against dissemination beyond the parties to this litigation. Under Superior Court Civil Rule 26 (c)(7), a party may obtain, for good cause shown, a protective order which provides that a trade secret or other confidential information not be disclosed or only be disclosed in a designated way. The Manual has been produced, pursuant to a previous order of this Court, under the provisions of Superior Court Civil Rule 5 (g)(3), which allows for the temporary sealing of Court documents pending final judicial determination concerning restrictions to be placed on the documents to prevent public disclosure.

(2) PHS also moved for a protective order with regard to the Proposal it had submitted during the process of obtaining its contract with the State. The State has already provided the Proposal to Plaintiff pursuant to the Freedom of Information Act. PHS contends that the Proposal should have been excluded from the Freedom of Information Act, however PHS concedes that the issue of a protective order covering the Proposal is moot.

(3) PHS has provided an affidavit signed by Jonessa Milliken, Litigation Manager for PHS. In this affidavit, Ms. Milliken states that PHS is involved in a unique industry and has relatively few competitors, and that the public disclosure

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of the information contained in the Manual will have a detrimental economic effect on the ability of PHS to compete with their rivals on both a national and local level. Ms. Milliken identifies the information contained in the Manual as a product of extensive experience, research, and development, and states that it contains trade secrets and proprietary commercial information that is not generally available to the industry at large.

(4) Ms. Milliken's affidavit establishes to my satisfaction that the Manual in question is proprietary in nature. Defendant PHS has shown good cause sufficient to warrant a protective order prohibiting the Manual from being disseminated publicly to the extent that the information within has not already been disclosed by the State pursuant to the Freedom of Information Act. The Plaintiff may petition the Court at trial to lift this Order as to any part of the Manual for the purpose of admitting relevant evidence.

NOW, THEREFORE, IT IS ORDERED that the PHS General Policy and Procedure Manual for Prisons are deemed confidential to the extent not already disclosed as part of the Proposal produced by the State pursuant to the Freedom of Information Act.

/s/ Henry duPont Ridgely
President Judge

cmh

oc: Prothonotary

xc: Order distribution

Richard Galperin, Esq.