

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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IN RE: HYPODERMIC PRODUCTS ANTITRUST  
LITIGATION

MEDSTAR HEALTH, INC., *et al.*,

Plaintiffs,

-vs-

BECTON DICKINSON & COMPANY,

Defendant.

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09-MC-6027-CJS

DECISION & ORDER  
ON MOTION TO FILE  
DOCUMENTS UNDER  
SEAL

MDL No. 1730

**Siragusa, J.** This matter is before the Court on a motion (Docket No. 4) by MedStar Health, Inc. (“MedStar”) to file the Declaration of Torsten M. Kracht (Aug. 31, 2009) and the memorandum of law (Aug. 31, 2009), both submitted in opposition to the motion to quash filed by non-party Kevin Maier (“Maier”). Mr. Kracht, in his declaration in support of the motion to seal, includes a copy of the Discovery Confidentiality Order filed in *Louisiana Wholesale Drug Company, Inc., et al. v. Becton Dickinson & Co.*, No. 05-CV-1602 (JLL) (Docket No. 16) (D.N.J. Aug. 10, 2005), filed in the underlying case pending in the District of New Jersey. In that Order, the District of New Jersey directed that certain information relative to the lawsuit be kept confidential. Mr. Kracht contends that the transcript of a deposition of Edward Kirker is protected by that confidentiality order. Maier has not opposed the motion.

Western District of New York Local Rule of Civil Procedure 5.4 reads in pertinent part as follows:

A party seeking to have a document, party or entire case sealed shall submit an application, under seal, setting forth the reasons for sealing, together with a proposed order for approval by the assigned Judge. The proposed order shall include language in the "ORDERED" paragraph stating the referenced document(s) to be sealed. Upon approval of the sealing order by the assigned Judge, the Clerk shall seal the document(s). Upon denial of a sealing application, the Clerk shall notify the party of such decision. The party shall have five business days from the date of the notice to withdraw the document(s) submitted for sealing or appeal the decision denying the sealing request. If the party fails to withdraw the document(s) or otherwise appeal after the expiration of five business days, the document(s) shall be filed by the Clerk and made a part of the public record.

W.D.N.Y. Loc. R. Civ. P. 5.4(b). The Western District of New York Administrative Procedures Guide also addresses document sealing and provides in pertinent parts as follows:

A party seeking to file a document under seal shall deliver a paper copy of the following documents directly to the chambers of the assigned judge, without electronically filing the same: (a) a copy of the document to be sealed; (b) a supporting affidavit setting forth the reasons as to why the document should be placed under seal and, if appropriate, a memorandum of law ("supporting materials"); (c) a letter-size envelope ("sealing envelope") to which is affixed a label bearing the case name, case number and the words "Sealed per Order of Judge \_\_\_\_\_" ; and (d) a proposed order granting the motion to seal.

In addition, the party shall electronically file a notice of motion which shall identify the nature of the document to be sealed, but need not state the reasons why sealing is necessary....

If the motion to seal is granted, the assigned judge will sign the sealing envelope and electronically file an order authorizing the filing of the document under seal. The document will be maintained under seal in the Clerk's office and will not be filed electronically.

W.D.N.Y. Administrative Procedures Guide at 11–12.

The Court grants MedStar's motion on the basis of the discovery confidentiality order. Accordingly, it is hereby

ORDERED, that MedStar's application (Docket No. 4) is granted; and it is further

ORDERED, that the Declaration of Torsten M. Kracht (Aug. 31, 2009) and the memorandum of law (Aug. 31, 2009) shall be filed under seal.

IT IS SO ORDERED.

Dated: March 5, 2010  
Rochester, New York

ENTER:

/s/ Charles J. Siragusa  
CHARLES J. SIRAGUSA  
United States District Judge