IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-CV-00520-PAB

HEALTH GRADES, INC.,

Plaintiff,

v.

MDX MEDICAL, INC. d/b/a VITALS.COM,

Defendant.

MDX MEDICAL, INC.'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 26(C) FOR A PROTECTIVE ORDER

Defendant and Counterclaim Plaintiff MDx Medical, Inc. ("MDx") submits its Reply to Health Grades, Inc. ("Health Grades") Response to MDx Medical, Inc.'s Motion Pursuant to Federal Rules of Civil Procedure 26(C) for a Protective Order (dkt. # 170).

Health Grades does not oppose the entry of a protective order and explicitly acknowledges that one should be entered in this case. Health Grades and MDx disagree on only one issue, the opportunity to object prior to disclosure of confidential materials to third parties and experts.[1]

It is critical that MDx receive advance notice prior to Health Grades providing MDx's confidential information to third parties and experts. The safety net of a protective order would be lost if the receiving party could distribute highly confidential materials to whomever it alone

[1] MDx does not dispute Health Grades' request to provide six in-house party representatives, as opposed to four, with access to confidential documents.

deemed appropriate. MDx does not anticipate any objections, but of course it cannot know in advance.

In contrast to the cases cited by MDx wherein this Court has required procedures like those requested by MDx, Health Grades could find nothing supporting its unusual position that each party may alone determine who should have access to the opposing party's highly confidential information. And Health Grades' continuing refusal to tell MDx or this Court the identities of the third parties to whom it plans such disclosure is cause for serious concern – Health Grades seems worried about the reaction of MDx and the Court. If these people are questionable and subject to objection, as Health Grades' secrecy suggests may be the case, it will be too late after Health Grades discloses the information for MDx to then object -- the damage will be done. We cannot "unring" the bell.

Lastly, the language MDx requests is language ***proposed by Health Grades itself***. It was only some time later that Health Grades had this odd change of heart.

Advance notice is simple and easily done. Unless Health Grades has something nefarious planned, the requested provision should be no problem at all. Accordingly, MDx respectfully requests the entry of its proposed order.

Dated: April 13, 2012

Respectfully submitted,

s:/Scott D. Stimpson

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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2012, I electronically filed the foregoing MDX MEDICAL, INC.'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 26(C) FOR A PROTECTIVE ORDER with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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