

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



ORIGINAL

_____)
In the Matter of)
)
LabMD, Inc.,)
a corporation,)
Respondent.)
_____)

DOCKET NO. 9357

**ORDER GRANTING RESPONDENT’S RENEWED MOTION FOR ORDER
REQUIRING TESTIMONY UNDER GRANT OF IMMUNITY
PURSUANT TO COMMISSION RULE 3.39(b)(2)**

On December 11, 2014, Respondent LabMD, Inc. (“Respondent” or “LabMD”) filed a Renewed Motion for an Order Requiring Richard Edward Wallace to Testify in Person and in Open Session Under a Grant of Immunity Pursuant to Commission Rule 3.39(b)(2) (“Motion”). On December 15, 2014, Federal Trade Commission (“FTC”) Complaint Counsel filed a response to the Motion stating that it does not oppose the issuance of the requested order, but requesting that the evidentiary hearing not resume for 60 days, in order to enable Complaint Counsel to receive and review discovery permitted under the Order issued on December 8, 2014. As set forth below, the Motion is GRANTED, and Complaint Counsel’s request is allowed.

By way of background, on October 9, 2014, an order was issued granting Respondent’s unopposed request for an order officially requesting, through the Commission’s liaison officer, approval by the Attorney General for the issuance of an order requiring Mr. Wallace to testify and granting immunity, as provided by Rule 3.39, 16 C.F.R. § 3.39 (“October 9 Order”). Rule 3.39(b) of the Commission’s Rules of Practice, titled “Orders requiring witnesses to testify or provide other information and granting immunity,” states:

Requests by counsel other than Commission complaint counsel for an order requiring a witness to testify or provide other information and granting immunity under 18 U.S.C. 6002 may be made to the Administrative Law Judge and may be made *ex parte*. When such requests are made, the Administrative Law Judge is authorized to determine:

- (1) That the testimony or other information sought from a witness or deponent, or prospective witness or deponent, may be necessary to the public interest, and (2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of his or her privilege against self-incrimination; and,

upon making such determinations, to request, through the Commission's liaison officer, approval by the Attorney General for the issuance of an order requiring a witness to testify or provide other information and granting immunity; and, after the Attorney General (or his or her designee) has granted such approval, to issue such order when the witness or deponent has invoked his or her privilege against self-incrimination and it cannot be determined that such privilege was improperly invoked.

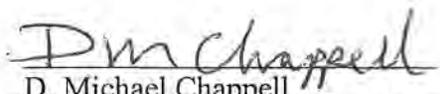
16 C.F.R. § 3.39(b).

The October 9 Order found that the testimony sought from Mr. Wallace may be necessary to the public interest, and that Mr. Wallace had refused or was likely to refuse to provide information based upon his privilege against self-incrimination. Accordingly, pursuant to Rule 3.39(b)(2), the October 9 Order directed the Commission's liaison officer request approval by the Attorney General for the issuance of an order requiring Mr. Wallace to testify and granting immunity. The October 9 Order further provided that, in accordance with Rule 3.39(b)(2), "[o]nce such approval is granted, upon proper motion by the Respondent, an appropriate order shall be issued." On November 14, 2014, the Attorney General approved the request for authority to issue an order requiring Mr. Wallace's testimony and granting immunity.

Based on the foregoing, Respondent's Motion is GRANTED, and it is hereby ORDERED that:

1. Pursuant to the October 9 Order and the authorization granted by the Attorney General on November 14, 2014, in accordance with 18 U.S.C. § 6001 et seq., Richard Wallace is ordered to appear to testify at the evidentiary hearing of this matter, which testimony shall in public session absent a showing under Rule 3.45 that all or part of such testimony should be given *in camera* treatment;
2. Pursuant to the October 9 Order and the authorization granted by the Attorney General on November 14, 2014, in accordance with 18 U.S.C. § 6001 et seq., Richard Wallace shall have immunity under 18 U.S.C. § 6002 in giving testimony or other information that he has refused to give on the basis of the privilege against self-incrimination; and
3. The evidentiary hearing in this matter shall resume at 10:00 a.m. on March 3, 2015.

ORDERED:


D. Michael Chappell
Chief Administrative Law Judge

Date: December 29, 2014