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From:
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Re: Decision in Guidant v. Aspen Healthcare Metrics Litigation

A federal court in Minnesota recently rendered a significant decision in Guidant's favor in Guidant's lawsuit against Aspen Healthcare Metrics. Guidant sued Aspen for tortious interference with confidentiality agreements and misappropriation of trade secrets. Guidant filed those claims against Aspen due to Aspen's practice of obtaining Guidant's confidential pricing information from hospitals without Guidant's authorization. In the lawsuit, Aspen did not deny that it routinely obtains Guidant's prices from hospitals around the country without authorization from Guidant.

On February 2, the federal court ruled that hospitals have breached Guidant's confidentiality agreements by sharing Guidant's confidential pricing information with Aspen, and that Aspen is liable for inducing hospitals to breach those confidentiality agreements. The Court rejected Aspen's purported justifications for its practice of obtaining and using Guidant's confidential prices without Guidant's authorization. The Court also dismissed Aspen's claim that Guidant defamed it. The Court issued this order against Aspen as a matter of law on summary judgment. Damages and injunctive relief will be determined in the near future.

Guidant's ability to negotiate prices and contract terms on a hospital-by-hospital basis depends on maintaining the confidentiality of Guidant's sales contracts. Guidant's hospital customers overwhelmingly support negotiated contracts, rather than uniform pricing and contract terms. Through negotiation, Guidant and its customers are able to reach mutually beneficial terms best suited to each hospital's circumstances. Confidential pricing has long been a standard practice throughout the CRM and medical-device industry.

Guidant has and will continue to work with hospital consultants who commit to honoring the confidentiality of Guidant's pricing information. However, in the words of the federal court, "Aspen then uses its knowledge of hospitals' confidential pricing information to advise other hospitals what to pay for CRM devices." Aspen has refused to respect pricing confidentiality and instead markets its knowledge of Guidant's confidential prices to other hospitals.

Since the Court issued its order, Aspen and its parent company, MedAssets, have disingenuously claimed to support open and transparent prices. Nothing could be further from the truth. Aspen's business depends on pricing confidentiality because it profits by selling its knowledge of confidential prices to hospitals. In fact, Aspen's agreements with hospitals include a confidentiality agreement providing that the hospital's prices and negotiating documents are confidential and proprietary to Aspen.

Guidant's confidential and proprietary pricing information should not be disclosed to consultants, data services, surveys, or other third parties without Guidant's authorization. This position is necessary to protect not only Guidant's confidential pricing information but also the interests of our many customers that have always valued and honored confidentiality. Guidant

shares its customers' interests in disclosing prices to third-party payors and patients as necessary and on a confidential basis.

Given the Court's clear ruling that Guidant's pricing must remain confidential and cannot be shared without Guidant's authorization, Guidant looks forward to continuing to build the trust and value inherent in our business relationships with our customers.

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