

LabMD states instead that the ALJ's Initial Decision and Order "were both correct and should be affirmed." Cross-Appeal Notice at 2. Moreover, we disagree with LabMD's argument that it must file a "protective cross-appeal" in order to preserve issues for appeal to a federal circuit court. 16 C.F.R. § 3.54(a). Under LabMD's reasoning, every case in which one party prevails could result in an appeal by the unsuccessful party and a second, purported "protective cross-appeal" by the victor. Such a result would be inconsistent with general appellate practice and would prove highly burdensome and wasteful for all involved. Consequently, LabMD is not entitled to file an opening appeal brief.

Of course, LabMD is certainly entitled to make, in an answering brief, conditional arguments setting forth alternate grounds for affirmance of the ALJ's decision. In view of the number of issues that may be raised in connection with Complaint Counsel's appeal, we find that LabMD's request for leave to file a longer answering brief is justified in this case. We have determined to increase the word limit for LabMD's answering brief by 7,000 words. We likewise increase Complaint Counsel's word limit for its reply brief by 7,000 words and extend by a few days the deadline by which it must be filed.

We now turn to LabMD's cross-motion to strike Complaint Counsel's Notice of Appeal. We disagree with LabMD's assertion that Complaint Counsel's notice is deficient due to a lack of specificity. Commission Rule of Practice 3.52 requires only that a notice of appeal "specify the party or parties against whom the appeal is taken and shall designate the initial decision and order or part thereof appealed from." 16 C.F.R. § 3.52(b)(1). There is no question that Complaint Counsel's Notice of Appeal complies with Rule 3.52. There is thus no basis for striking it.²

Accordingly,

IT IS HEREBY ORDERED THAT while Respondent may not file an opening appeal brief, it may file an answering brief that shall not exceed 21,000 words. Any such answering brief must be filed on or before February 5, 2016; and

IT IS FURTHER ORDERED THAT Complaint Counsel may file a reply brief that shall not exceed 14,000 words. Any such reply brief must be filed on or before February 23, 2016.

By the Commission, Commissioner Brill not participating.

Donald S. Clark
Secretary

SEAL:
ISSUED: December 18, 2015

² Commissioner Brill did not take part in the consideration of, or decision regarding, any of the issues herein.