

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**  
**Maureen K. Ohlhausen**  
**Terrell McSweeney**



In the Matter of

**The Penn State Hershey Medical Center,**  
a corporation,

and

**Pinnacle Health System,**  
a corporation.

Docket No. 9368

PUBLIC DOCUMENT

**ORIGINAL**

**JOINT EXPEDITED MOTION FOR  
CONTINUANCE OF THE ADMINISTRATIVE HEARING**

Complaint Counsel and Respondents, Penn State Hershey Medical Center and Pinnacle Health System, jointly move to continue all current deadlines in this matter—including the commencement of the administrative hearing—by one week. The parties respectfully request that the Commission rule on this motion expeditiously, so that they can take any necessary steps in light of the Commission’s decision.

As required by Rules 3.21(c) and 3.41(f), there is “good cause” for granting this brief continuance. As the Commission knows, on September 27 the Third Circuit Court of Appeals ordered the District Court for the Middle District of Pennsylvania to preliminarily enjoin Respondents’ combination pending the outcome of the administrative hearing. Respondents are assessing their options in light of this decision, and Hershey’s governing body will be meeting this week to determine whether to continue pursuing the combination. Respondents will not have a decision until October 14. A brief continuance would allow Respondents to complete the decisionmaking process, and would prevent the parties, the Commission, and the many third parties potentially involved in this case from expending any resources in service of a proceeding that would ultimately be rendered moot if Respondents elect not to pursue the combination. And this continuance would not impose any countervailing harms. Accordingly, the parties jointly request that all deadlines be continued by one week.

**BACKGROUND**

The Commission initiated this administrative proceeding on December 7, 2015. Two days later, it filed a companion suit for preliminary injunctive relief in the U.S. District Court for the Middle District of Pennsylvania. *FTC v. Penn State Hershey Med. Ctr.*, No. 1:15-cv-2362 (M.D. Pa. Dec. 9, 2015), ECF No. 1.

On May 9, 2016, the district court issued a memorandum opinion and order denying the Commission's request for preliminary injunctive relief. ECF No. 131. After an expedited appeal, the Third Circuit on September 27 reversed the district court and remanded, ordering the district court to preliminarily enjoin the merger pending the outcome of this administrative proceeding. *FTC v. Penn State Hershey Med. Ctr.*, No. 16-2365 (3d Cir. Sept. 27, 2016).

The administrative hearing is currently set to begin on October 18, based on the Commission's order granting the parties' joint request to continue the hearing until 21 days after the Third Circuit ruled. *In re Penn State Hershey Med. Ctr.*, No. 9368, Comm'n Order Granting Continuance (June 10, 2016). Pre-hearing deadlines and the final prehearing conference are scheduled for October 17. *In re Penn State Hershey Med. Ctr.*, No. 9368, Third Revised Scheduling Order (June 13, 2016).

**ARGUMENT**

Under the Rules of Practice, the Commission has authority to stay the administrative hearing upon a showing of "good cause." 16 C.F.R. §§ 3.21(c), 3.41(f). Good cause exists here, as the value of proceeding with the administrative hearing process before Respondents are able to reach a final decision as to how to proceed is greatly outweighed by the substantial possibility that Respondents' decision will render the hearing moot, and by the significant—and likely unnecessary—burden that the hearing would impose on Complaint Counsel, Respondents, and the many non-party witnesses involved in this proceeding.

If, after Hershey's governing body convenes, Respondents elect to abandon the combination, the administrative hearing will be rendered moot. Accordingly, there is simply no reason to proceed with the administrative hearing before Respondents can reach a final decision.

There are, on the other hand, very good reasons *not* to proceed with the hearing until after the Respondents finalize their decision. As the parties have jointly recognized in their prior motions for continuances, proceeding with the hearing would require substantial preparations and expenses on behalf of both Complaint Counsel and Respondents; going forward now would create the risk that those preparations and expenses will be rendered meaningless if Respondents choose to abandon the combination. This substantial burden, moreover, would not impact the parties alone, but rather would be especially onerous for the many third parties involved in this litigation. The parties have identified 66 third-party witnesses they may call to testify; proceeding with the hearing raises the risk that those many individuals will incur substantial out-of-pocket expenses—and take time out of their schedules to travel to Washington, D.C.—all in furtherance of a proceeding that will likely be rendered moot. The parties have also obtained discovery from 53 non-parties that would need to expend money and effort reviewing their materials, identifying confidential materials, and potentially filing motions for *in camera* treatment. There is no basis for significantly burdening so many third parties in furtherance of an administrative hearing that may well be mooted—especially given that simply delaying the hearing will not impose any countervailing harm at all.

**CONCLUSION**

Complaint Counsel and Respondents jointly submit that the interests of all parties and third parties—as well as the Commission—are best served by continuing the administrative hearing for one week. The parties therefore jointly and respectfully request that the Commission continue all existing deadlines by one week.

Dated: October 11, 2016

Respectfully submitted,

*/s/ William H. Efron*

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BEFORE FEDERAL TRADE COMMISSION

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**[PROPOSED] ORDER GRANTING**  
**RESPONDENTS' MOTION TO STAY THE ADMINISTRATIVE HEARING**

This matter having come before the Commission upon Complaint Counsel and Respondents' Joint Expedited Motion For Continuance of The Administrative Hearing, and having considered the positions of all parties, it is hereby ORDERED that the administrative hearing is continued for seven days until October 25, 2016, and that all pre-hearing deadlines are similarly extended.

SO ORDERED.

Date:

\_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on October 11, 2016, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark  
Secretary  
FEDERAL TRADE COMMISSION  
600 Pennsylvania Ave., N.W., Rm. H-113  
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The Honorable D. Michael Chappell  
Chief Administrative Law Judge  
FEDERAL TRADE COMMISSION  
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**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed documents that is available for review by the parties and the adjudicator.

Dated: October 11, 2016

*/s/ Adrian Wager-Zito*  
\_\_\_\_\_  
Adrian Wager-Zito

Notice of Electronic Service

**I hereby certify that on October 11, 2016, I filed an electronic copy of the foregoing Joint Expedited Motion for Continuance of the Administrative Hearing, with:**

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Washington, DC, 20580

Donald Clark  
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**I hereby certify that on October 11, 2016, I served via E-Service an electronic copy of the foregoing Joint Expedited Motion for Continuance of the Administrative Hearing, upon:**

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