

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

PUBLIC VERSION



In the Matter of

The Penn State Hershey Medical Center,
a corporation,
and
Pinnacle Health System,
a corporation.

Docket No. 9368

ORIGINAL

PUBLIC DOCUMENT

JOINT MOTION TO AMEND THE SCHEDULING ORDER

Complaint Counsel and Respondents, Penn State Hershey Medical Center (“Hershey”) and PinnacleHealth System (“Pinnacle”), jointly move to amend the Scheduling Order in the above-referenced matter.

The hearing in this matter is currently scheduled to commence on May 17, 2016. The Court previously granted a motion amending the Scheduling Order to move certain pre-hearing deadlines to the week of May 9. Order Granting Joint Mot. To Amend (Apr. 25, 2016). Those modifications were premised on the fact that, in the related district-court challenge to the Hershey-Pinnacle combination, Judge John E. Jones III has committed, to the best of his ability, to issue an opinion on the preliminary-injunction motion before the administrative hearing begins: “It is my intention to and I’ll make every effort to render a determination by the start of the—the scheduled start of the administrative proceeding. I understand that that’s important to everybody, and so I’m going to make every attempt to do that.” *F.T.C. v. Penn State Hershey Med. Ctr.*, No. 1:15-cv-2362-JEJ (M.D. Pa.), Hrg. Tr. 995:6-10 (Apr. 15, 2016).

In light of Judge Jones’ statement, the parties are today filing a joint motion asking the Commission to continue the administrative hearing’s commencement until June 7, 2016. To ensure that no pre-hearing deadlines occur before the Commission rules on that joint motion, the parties respectfully request that the Scheduling Order be amended to move certain deadlines from the week of May 9 to May 17. An extension of these deadlines will substantially reduce

the burden on nonparties, who under the current schedule are required to file motions for in camera treatment of any proposed trial exhibits on May 9. Given that the parties have collectively identified trial exhibits from over 50 nonparties, granting a brief adjournment could avoid a significant amount of potentially unnecessary inconvenience and expense for such nonparties. In the event the Commission does not continue the administrative hearing’s commencement, the parties will undertake to proceed in a manner that does not prejudice the Court if it amends the Scheduling Order in this fashion.

Set forth below are the proposed amendments to the Scheduling Order:

Event	Current Deadline	Proposed Deadline
Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s).	May 9	May 17
Deadline for filing motions <i>in limine</i> to preclude admission of evidence.	May 9	May 17
Deadline for filing motions for <i>in camera</i> treatment of proposed trial exhibits.	May 9	May 17
Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.	May 9	May 17
Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.	May 10	May 17
Complaint Counsel files pretrial brief supported by legal authority.	May 10	May 17
Deadline for filing responses to motions <i>in limine</i> to preclude admission of evidence.	May 11	May 17
Deadline for filing responses to motions for <i>in camera</i> treatment of proposed trial exhibits.	May 11	May 17
Exchange proposed stipulations of law, facts, and authenticity.	May 11	May 17

Event	Current Deadline	Proposed Deadline
Respondents' Counsel files pretrial brief supported by legal authority.	May 13	May 17
By 1:00 p.m., file final stipulations of law, facts, and authenticity.	May 13	May 17
Final prehearing conference to begin at 10:00 a.m.	May 16	May 17

Dated: May 4, 2016

Respectfully submitted,

/s/ Adrian Wager-Zito

/s/ William H. Efron (with consent)

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Counsel Supporting the Complaint

*Counsel for Respondents
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 & Pinnacle Health System*

EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION and :
COMMONWEALTH OF PENNSYLVANIA, :
Plaintiffs :
vs. : Case No. 1:15-CV-02362
PENN STATE HERSHEY MEDICAL : (Judge Jones)
CENTER and PINNACLEHEALTH :
SYSTEM, :
Defendants :

TRANSCRIPT OF PRELIMINARY INJUNCTION PROCEEDINGS
BEFORE THE HONORABLE JOHN E. JONES, III
UNITED STATES DISTRICT COURT JUDGE
APRIL 15, 2016; 9:01 A.M.
HARRISBURG, PENNSYLVANIA

MORNING AND AFTERNOON SESSIONS
PAGES 804 THROUGH 996

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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 THE COURT: Because be careful.

2 THE WITNESS: So the question is asking why I don't
3 use the root mean squared error term that Ms. McEvoy was just
4 asking about, and that's a single numerical metric of assessing
5 accuracy.

6 I thought it was more informative to use a data
7 visualization approach that allowed us to really see where our
8 respective models were proving to be accurate versus inaccurate
9 and the ways in which we were accurate or not so accurate.

10 MR. PLATT: I would have done the same thing. Thank
11 you very much.

12 THE COURT: I bet you would. I assume no recross.

13 MS. McEVOY: Extremely tempting, Your Honor, but no.

14 THE COURT: We're finished with Dr. Wilson. You can
15 step down, sir. Thank you very much.

16 THE WITNESS: Thank you very much.

17 THE COURT: Any other rebuttal?

18 MR. EFRON: No, Your Honor.

19 THE COURT: You rest?

20 MR. EFRON: Yes.

21 THE COURT: All right. Let me say a couple things as
22 we wrap up. And we have wrapped up the testimony.

23 I had a discussion with counsel in chambers, and just
24 to note that on the record, we will issue an order, having
25 collaborated with counsel on the best course from this point,

1 and we will ask for accelerated submissions, the plaintiffs'
2 by -- I believe it's the 25th, I think, of April, which is the
3 Monday following this coming Monday, and then we'll give an
4 equal amount of time, unless filed sooner, for the defense, a
5 submission, no reply. We just don't have time for that.

6 It is my intention to and I'll make every effort to
7 render a determination by the start of the -- the scheduled
8 start of the administrative proceeding. I understand that
9 that's important to everybody, and so I'm going to make every
10 attempt to do that.

11 I want to say publicly that I've been living with this
12 case not quite as long as all of you have, but for quite some
13 time. And it is important to note that counsel in this case
14 have conducted themselves with the highest degree of
15 professionalism, each and every one of you.

16 It was a pleasure, it is a pleasure having you on my
17 docket. The collaborative, collegial spirit in a legal world
18 where you don't see that, unfortunately, every day was really
19 heartening to me to watch.

20 This is a very, very important case from the public
21 standpoint, from the standpoint of the hospitals. I understand
22 that. It falls to me to make a very difficult decision. But
23 this case demonstrates what I have seen in some of the
24 toughest, most contentious cases, which is that lawyers can
25 fight hard and professionally -- and you have, and you will,

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Docket No. 9368

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**[PROPOSED] ORDER GRANTING
JOINT MOTION TO AMEND THE SCHEDULING ORDER**

This matter having come before the Commission upon the Joint Motion to Amend the Scheduling Order, and having considered the position of the parties, it is hereby ORDERED that the Scheduling Order in the above-captioned matter is amended to reflect the agreed-upon dates provided in the Joint Motion. All other deadlines in the Scheduling Order remain in effect.

SO ORDERED.

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 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
Washington, DC 20580

The Honorable D. Michael Chappell
Chief Administrative Law Judge
FEDERAL TRADE COMMISSION
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

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Jared P. Nagley
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*Counsel Supporting the Complaint
Federal Trade Commission*

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: May 4, 2016

/s/ Adrian Wager-Zito
Adrian Wager-Zito

Notice of Electronic Service

I hereby certify that on May 04, 2016, I filed an electronic copy of the foregoing Joint Motion to Amend Scheduling Order, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on May 04, 2016, I served via E-Service an electronic copy of the foregoing Joint Motion to Amend Scheduling Order, upon:

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