

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

In the Matter of

**Hackensack Meridian Health, Inc.,
a corporation,**

and

**Englewood Healthcare Foundation,
a corporation.**

Docket No. 9399

**COMPLAINT COUNSEL'S UNOPPOSED MOTION TO AMEND
SCHEDULING ORDER**

Complaint Counsel moves to amend the Scheduling Order entered by this Court on November 11, 2021. Respondents do not oppose Complaint Counsel's motion to move the schedule six days in order to allow the Commission to rule on Respondents' Motion to Dismiss this action because the parties' merger agreement has been terminated, their HSR filings have been withdrawn, and Respondents believe this action is now moot.

On August 4, 2021, after a seven-day evidentiary hearing, the United States District Court for the District of New Jersey preliminarily enjoined Respondents' merger. On March 31, 2022, the United States Court of Appeals for the Third Circuit affirmed the preliminary injunction. On April 5, 2022, the Respondents withdrew their Hart-Scott-Rodino Notification and Report Forms, abandoning the transaction.

On April 5, 2022, Complaint Counsel filed a motion to withdraw the matter from adjudication so that the Commission could assess whether further relief is warranted. The same day, Respondents filed a motion to dismiss the complaint as moot. If any of the above motions are granted, proceedings will be terminated, suspended, or significantly delayed. Among the most

pressing deadlines is that motions for *in camera* treatment are currently due to be filed by nonparties on April 12. The requested amendments to the scheduling order would move that date until April 18, reducing the risk that many nonparty healthcare providers and others, who may have confidential information used or witnesses called at the administrative trial, will incur unnecessary expense and burden over the coming days and weeks on pre-trial preparation and commencing the administrative trial, only to have the trial permanently suspended shortly thereafter. These extensions will likewise also save this Court from potentially unnecessary expenditures of time and resources.

On April 5, 2022, Complaint Counsel filed a motion to postpone, for 60 days, the commencement of the administrative hearing that currently is scheduled to begin on April 22, 2022. The Commission has ordered expedited briefing of that motion and any response to Complaint Counsel's motion is due no later than April 8 at 1 pm. If the Commission does move the hearing date and the Court grants this motion, this Court will have saved approximately two dozen nonparties—nearly all of which are hospitals and others in the healthcare industry that continue to be engrossed in challenges presented by the global pandemic—meaningful expense and burden. If this Court grants this motion, but the Commission declines to enter the requested stay, the Parties are prepared to proceed in a manner that does not require that the Court have decided all of the motions for *in camera* treatment prior to the trial.

This is the sixth request the parties have made to revise the Court's Scheduling Order. The parties hereby request the following amendments detailed below:

Action	Current Deadline	Proposed Deadline
Complaint Counsel files pretrial brief supported by legal authority.	Ten days prior to start date of evidentiary hearing (April 12, 2022)	April 18, 2022
Deadline for filing motions <i>in limine</i> to preclude admission of evidence. See Additional Provision 13	Ten days prior to start date of evidentiary hearing (April 12, 2022)	April 18, 2022
Deadline for filing motions for <i>in camera</i> treatment of proposed trial exhibits. See Additional Provision 12.	Ten days prior to start date of evidentiary hearing (April 12, 2022)	April 18, 2022
Deadline for filing responses to motions <i>in limine</i> to preclude admission of evidence	Seven days prior to start date of evidentiary hearing (April 15, 2022)	April 19, 2022
Deadline for filing responses to motions for <i>in camera</i> treatment of proposed trial exhibits	Seven days prior to start date of evidentiary hearing (April 15, 2022)	April 19, 2022
Exchange and provide a courtesy copy to ALJ of objections to final proposed witness lists and exhibit lists. The parties are directed to review the Commission's Rules on admissibility of evidence before filing objections to exhibits	Seven days prior to start date of evidentiary hearing (April 15, 2022)	April 19, 2022
Exchange proposed stipulations of law, facts, and authenticity	Seven days prior to start date of evidentiary hearing (April 15, 2022)	April 19, 2022
Respondents' Counsel files pretrial brief supported by legal authority	Six days prior to start date of evidentiary hearing (April 18, 2022)	April 20, 2022
Final prehearing conference to begin at 1:00 p.m. Eastern Time	Three days prior to start date of evidentiary hearing (April 19, 2022)	April 21, 2022
Commencement of Hearing, to begin at 10:00 a.m. Eastern Time	April 22, 2022	April 22, 2022

A Proposed Order is attached.

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Respectfully submitted,

s/ Jonathan Lasken

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Anthony Saunders

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Counsel Supporting the Complaint

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[PROPOSED] ORDER AMENDING SCHEDULING ORDER

This matter having come before the Court upon Complaint Counsel's Unopposed Motion to Amend 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 dates provided in the Unopposed Motion.

All other provisions of the Scheduling Order shall remain in effect.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2022, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

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