

Interlocutory Orders, Etc.

IN THE MATTER OF

**SANFORD HEALTH,
SANFORD BISMARCK,
AND
MID DAKOTA CLINIC, P.C.**

Docket No. 9376. Order, November 21, 2017

Order granting Complaint Counsel's and Respondents' joint motion to postpone commencement of the administrative hearing in this proceeding.

ORDER GRANTING FURTHER CONTINUANCE OF ADMINISTRATIVE
PROCEEDINGS

On November 14, 2017, Complaint Counsel and Respondents Sanford Health, Sanford Bismarck, and Mid Dakota Clinic, P.C. jointly moved to postpone commencement of the administrative hearing in this proceeding from December 12, 2017 to January 17, 2018, and to stay all pre-hearing deadlines by corresponding periods. *See* Joint Expedited Motion for Further Continuance of Administrative Proceedings ("Joint Motion").

The parties argue that "absent an extension of the continuance, the parties – and, importantly, third parties – will be required to devote significant resources to meeting various interim deadlines between now and December 12, 2017 (the current commencement date for the administrative hearing), including extensive document and data review." Joint Motion at 3. The parties also argue that "many non-party (and Respondents') witnesses who may be called to testify live are practicing physicians, and a brief stay will provide sufficient time for them to reschedule patient care and/or secure alternative coverage." Joint Motion at 3. Further, Respondents reiterate that if, after all appeals in the injunction proceedings are exhausted they are enjoined from consummating the acquisition, they will abandon the transaction. Joint Motion at 4.

The preliminary injunction hearing and post-hearing filings have concluded in the pending district court action. *Id.* at 2. The parties do not know when the district court will issue its decision regarding a preliminary injunction, but Judge Senechal stated at

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the conclusion of the hearing that she had a goal to provide a decision within a few weeks. *Id.* The administrative hearing before Judge Chappell is currently scheduled to begin December 12, 2017.

Commission Rule 3.41(f) provides, in relevant part, that a pending “collateral federal court action that relates to the administrative adjudication shall not stay the proceeding . . . [u]nless a court of competent jurisdiction, or the Commission . . . so directs.” 16 C.F.R. § 3.41(f). This reflects the Commission’s commitment to move forward as expeditiously as possible with administrative hearings on the merits. *See, e.g.*, 16 C.F.R. §§ 3.1, 3.11(b)(4), 3.41, 3.46, 3.51-3.52.

Yet, as we explained in our Order of November 3, 2017, the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary. Consequently, we previously granted a short continuance of fourteen days – to December 12, 2017 – to provide additional time for resolution of the district court action without materially delaying the Commission proceeding. Under the present circumstances, where the district court has concluded its hearing and has stated a goal to provide an opinion shortly, we again conclude that a limited continuance to allow time for resolution of the judicial proceedings is warranted. Accordingly,

IT IS HEREBY ORDERED that the Joint Expedited Motion for Further Continuance of Administrative Proceedings is **GRANTED**; and

IT IS FURTHER ORDERED that the evidentiary hearing in this proceeding shall commence on January 17, 2018, and that, unless modified by the Chief Administrative Law Judge, all related pre-hearing deadlines shall be extended by 36 days.

By the Commission.

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IN THE MATTER OF

HIKMA PHARMACEUTICALS PLC

Docket No. C-4568. Order, December 6, 2017

Letter notifying Hikma Pharmaceuticals plc of the Commission's decision to waive prior approval and public comment regarding modifications to the Supply Agreement and Asset Purchase Agreement.

LETTER WAIVING PRIOR APPROVAL AND COMMENT FOR
MODIFICATIONS TO AGREEMENTS

Maria Raptis, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP

Re: In the Matter of *Hikma Pharmaceuticals plc*,
Docket No. C-4568

Dear Ms. Raptis:

This letter refers to an application for approval that Hikma Pharmaceuticals plc ("Hikma") filed on October 23, 2017, which requested Commission approval of a proposed amendment to the Supply Agreement (Prednisone) and Asset Purchase Agreement, incorporated by reference into the Decision and Order entered into in this case.¹

After consideration of Hikma's application and pursuant to the authority delegated to me under Rule 2.41(f)(5)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 2.41(f)(5)(ii), I hereby waive the requirements for Commission approval and the public comment period for the amendment to the Supply Agreement and Asset Purchase Agreement described in Hikma's application.

If you have further questions, please contact David von Nirschl, the Compliance staff attorney assigned to this matter.

¹ Order ¶¶ I.R.R., II.A., and VI.