

Interlocutory Orders, Etc.

IN THE MATTER OF

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

Docket No. 9376. Order, December 21, 2017

Order granting Respondents' motion to postpone commencement of the administrative hearing in this proceeding pending appeal of the district court's order for Preliminary Injunction.

ORDER GRANTING FURTHER CONTINUANCE OF ADMINISTRATIVE
PROCEEDINGS

On December 14, 2017, Respondents Sanford Health, Sanford Bismarck, and Mid Dakota Clinic, P.C. filed an Unopposed Expedited Motion for Further Continuance of Administrative Proceedings Pending Appeal of Order Granting Motion for Preliminary Injunction. Respondents ask the Commission to continue commencement of the administrative hearing until 21 days after resolution of a pending appeal.

On December 13, 2017, the United States District Court for the District of North Dakota, Western Division, granted the motion for a preliminary injunction filed by the Federal Trade Commission and the North Dakota Attorney General to enjoin Sanford's proposed acquisition of Mid Dakota Clinic. On December 15, 2017, Respondents filed their notice of appeal of the preliminary injunction to the Eighth Circuit Court of Appeals. Respondents explain that under the Rules and practices of the Eighth Circuit, briefing for Respondents' appeal will be complete by March 14, 2018.

Similar to earlier requests for a continuance of the administrative proceedings, Respondents argue that absent an extension of the continuance, the Administrative Law Judge and parties, including third parties and witnesses, will be required to devote significant resources to meet various interim deadlines between now and the administrative hearing, which is currently scheduled to begin on January 17, 2018. Respondents repeat that

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if, after all appeals of the preliminary injunction are exhausted, they are enjoined from consummating the acquisition, they will abandon the proposed transaction. They explain that in such circumstance, the administrative hearing before the Administrative Law Judge would not be necessary.

As we explained in our earlier Orders granting continuances in this matter, the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary. Under the present circumstances, where the District Court has issued a preliminary injunction to enjoin the transaction and that Order has already been appealed to the United States Court of Appeals, we again conclude that a limited continuance to allow time for resolution of the judicial proceedings is warranted.

Accordingly, consistent with our prior decisions to stay administrative proceedings in *In the Matter of Advocate Health Care Network*, Docket No. 9369, Order Granting Continuance, (June 28, 2016) and *In the Matter of The Penn State Hershey Medical Center*, Docket No. 9368, Commission Order Granting Continuance (June 10, 2016),

IT IS HEREBY ORDERED that the evidentiary hearing shall commence 21 days after the United States Court of Appeals for the Eighth Circuit renders its judgment on Respondents' appeal, and that all pre-hearing deadlines shall be extended until after the Court of Appeals renders its judgment, as determined by the Administrative Law Judge.

By the Commission.