

INTERLOCUTORY, MODIFYING, VACATING, AND MISCELLANEOUS ORDERS

IN THE MATTER OF

HACKENSACK MERIDIAN HEALTH, INC.

AND

ENGLEWOOD HEALTHCARE FOUNDATION

Docket No. 9399. Order, July 1, 2021

Order granting the joint expedited motion for a continuance of Administrative Proceedings.

ORDER GRANTING FURTHER CONTINUANCE

On June 23, 2021, Complaint Counsel and Respondents Hackensack Meridian Health, Inc. (“HMH”) and Englewood Healthcare Foundation (“Englewood”) jointly moved to postpone commencement of the evidentiary hearing in this proceeding by approximately thirty days, until August 16, 2021. Joint Expedited Motion for a Continuance of Administrative Proceedings (“Joint Motion”). This represents the second joint request for continuance of the evidentiary hearing. On May 25, 2021, we granted a similar joint motion to continue the commencement of the hearing from June 15, 2021 to July 15, 2021. Order Granting Continuance (“May 25 Order”). For reasons similar to those expressed in our May 25 Order, we have determined to grant a further continuance of the hearing to August 16, 2021.

On December 3, 2020, the Commission issued an administrative complaint challenging a proposed transaction whereby HMH would acquire Englewood (“the Proposed Transaction”). The Commission at that time also filed a complaint in the U.S. District Court for the District of New Jersey seeking a preliminary injunction barring the Proposed Transaction until completion of the administrative proceeding. The preliminary injunction hearing concluded on May 18, 2021, and the district court heard closing arguments on June 2, 2021. The parties anticipate receiving a decision in that action within the next several months. Joint Motion at 2. The parties state that “[i]t is highly likely that [the preliminary injunction] ruling will cause these administrative proceedings to be suspended or rendered moot.” *Id.* at 4.

The parties argue that granting the requested continuance and extending pre-hearing deadlines would protect the parties and third parties and their witnesses from unnecessary burdens and expense, without prejudicing the Commission. *Id.* at 1-4. They explain that third parties will need to prepare complex submissions seeking in camera treatment of their discovery materials, and that witnesses – including up to 28 third-party witnesses – face the burden, expense, and disruption of preparing to testify and testifying. *Id.* at 3. *See* May 25 Order at 1-2.

Interlocutory Orders, Etc.

Commission Rule 3.41(f) provides 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 for good cause, so directs.” 16 C.F.R. § 3.41(f). This reflects the Commission’s commitment to move forward as expeditiously as possible with its administrative proceedings. *See, e.g.*, 16 C.F.R. §§ 3.1, 3.11(b)(4), 3.41(b). Nonetheless, the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary. May 25 Order at 2.

Under the circumstances presented, we find good cause for the requested continuance. Deferring the start of trial, and extending pre-hearing deadlines accordingly, will provide additional time for resolution of the district court action, which could obviate the need for an administrative hearing, without unduly delaying the Commission proceeding. We have granted continuances under comparable circumstances in the past. *See, e.g.*, *In re Thomas Jefferson Univ.*, Docket No. 9392, 2020 WL 7237952 (F.T.C. Nov. 6, 2020); *In re RAG-Stiftung*, Docket No. 9384, 2020 WL 91294 (F.T.C. Jan. 2, 2020); *In re Sanford Health*, Docket No. 9376, 2017 WL 6604532 (F.T.C. Dec. 21, 2017); *In re The Penn State Hershey Med. Ctr.*, Docket No. 9368, 2016 WL 3345405 (F.T.C. June 10, 2016); *In re Advocate Health Care Network*, Docket No. 9369, 2016 WL 3182774 (F.T.C. June 2, 2016).

Accordingly,

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

IT IS FURTHER ORDERED that the evidentiary hearing in this proceeding shall commence at 10:00 a.m. on August 16, 2021, and that, unless modified by the Chief Administrative Law Judge, all related pre-hearing deadlines shall be extended by thirty-two (32) days.

By the Commission, Chair Khan not participating.

Interlocutory Orders, Etc.

IN THE MATTER OF

**HACKENSACK MERIDIAN HEALTH, INC.
AND
ENGLEWOOD HEALTHCARE FOUNDATION***Docket No. 9399. Order, July 27, 2021*

Order granting the continuance of the hearing and rescheduling the Administrative Proceedings commencement date.

ORDER GRANTING THIRD CONTINUANCE

On July 20, 2021, Complaint Counsel and Respondents Hackensack Meridian Health, Inc. (“HMH”) and Englewood Healthcare Foundation (“Englewood”) jointly moved to postpone commencement of the evidentiary hearing in this proceeding by thirty days, until September 15, 2021 or such later date as may be convenient for the Chief Administrative Law Judge and the Commission. Joint Expedited Motion for a Continuance of Administrative Proceedings (“Joint Motion”). This represents the parties’ third request for continuance of the evidentiary hearing. On May 25, 2021 and July 1, 2021, we granted similar requests to continue the commencement of the hearing from June 15, 2021, to July 15, 2021, and then to August 16, 2021. Order Granting Continuance (“May 25 Order”); Order Granting Further Continuance (“July 1 Order”). For reasons similar to those expressed in our May 25 and July 1 Orders, we have determined to grant a further continuance of the hearing to October 12, 2021.

On December 3, 2020, the Commission issued an administrative complaint challenging a proposed transaction whereby HMH would acquire Englewood (“the Proposed Transaction”). The Commission at that time also filed a complaint in the U.S. District Court for the District of New Jersey seeking a preliminary injunction barring the Proposed Transaction until completion of the administrative proceeding. The preliminary injunction hearing concluded on May 18, 2021, and the district court heard closing arguments on June 2, 2021. The parties anticipate receiving a decision in that action within the next several months. Joint Motion at 2. The parties state that “[i]t is highly likely that [the preliminary injunction] ruling will cause these administrative proceedings to be suspended or rendered moot.” *Id.* at 4.

The parties argue that granting the requested continuance and extending pre-hearing deadlines would protect the parties and third parties and their witnesses from unnecessary burdens and expense, without prejudicing the Commission. *Id.* at 1-4; *see* May 25 Order at 1-2. We found these arguments persuasive in granting prior continuances of similar duration. *See* May 25 Order; July 1 Order.

Commission Rule 3.41(f) provides 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 for good cause, so directs.” 16 C.F.R. § 3.41(f). This reflects the Commission’s commitment to move forward as expeditiously as possible with its administrative proceedings. *See, e.g.,* 16 C.F.R. §§ 3.1, 3.11(b)(4), 3.41(b). Nonetheless, the public