

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

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interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary. May 25 Order at 2. For the reasons stated in our May 25 and July 1 Orders, and based on the authorities cited therein, we find that there is good cause to continue the commencement of the evidentiary hearing in order to protect the parties and third parties from likely unnecessary burden and expense.

Another Commission matter is currently set for hearing before the Chief Administrative Law Judge beginning one day before the parties' proposed date of September 15, 2021. To avoid a potential schedule conflict with that matter, we will re-set the hearing in this proceeding to begin on October 12, 2021.

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 October 12, 2021, and that, unless modified by the Chief Administrative Law Judge, all related pre-hearing deadlines shall be extended by fifty-seven (57) days.

By the Commission.

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IN THE MATTER OF

**HEALTH RESEARCH LABORATORIES, LLC.,
WHOLE BODY SUPPLEMENTS, LLC.,
AND
KRAMER DUHON***Docket No. 9397. Order, July 30, 2021*

Order directing parties to submit all material pertinent to the motion.

**ORDER DIRECTING PARTIES TO SUBMIT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND PROVIDING FOR SUMMARY DECISION PROCEEDING**

On April 20, 2021, the Chief Administrative Law Judge (“ALJ”) transferred this matter to the Commission for further proceedings pursuant to Commission Rule 3.12(b)(2), 16 C.F.R. § 3.12(b)(2). Order Granting In Part and Denying In Part Respondents’ Motion to Enter New Scheduling Order or, in the Alternative, to Transfer Case to the Commission (Apr. 20, 2021). To determine the appropriate next step, the Commission sought clarification concerning whether any factual issues remained and whether additional discovery and fact-finding was needed. On May 14, 2021, the Commission issued an order directing the parties to submit filings identifying any additional material facts that they intend to assert, listing the decisional issues to which each asserted additional fact relates, stating whether they dispute the facts identified by the other party, and explaining the basis for any such dispute. Order for Further Proceedings Before the Commission (May 14, 2021) (“Order for Further Proceedings”). The Commission also asked Respondents to clarify their position on the items in the Notice of Contemplated Relief attached to the Complaint that initiated this proceeding.

On May 25, 2021, Complaint Counsel submitted their Statement of Additional Material Facts. All of the additional facts citing documents other than the Complaint and its exhibits were identified as relating to the scope of relief. *See* Complaint Counsel’s Statement of Additional Material Facts, Att. A (May 25, 2021). On June 1, 2021, Respondents submitted their response. Respondents’ Response to Complaint Counsel’s Statement of Additional Material Facts (June 1, 2021) (“Respondents’ Response”). In that submission, Respondents advanced a number of objections and arguments in opposition to allowing Complaint Counsel to introduce their additional material facts. Respondents, however, did not specifically dispute any of the individual asserted facts, nor did they identify additional material facts of their own. On June 21, 2021, Complaint Counsel submitted a reply responding to Respondents’ various arguments. Reply to Respondents’ Response to Complaint Counsel’s Statement of Additional Material Facts (June 21, 2021).

Although Respondents have not disputed the veracity of any of Complaint Counsel’s additional material facts, they object to including those facts in the record for a variety of reasons. We address these in turn.