

Interlocutory Orders, Etc.

IN THE MATTER OF

**HEALTH RESEARCH LABORATORIES, LLC.,
WHOLE BODY SUPPLEMENTS, LLC.,
AND
KRAMER DUHON**

Docket No. 9397. Order, September 17, 2021

Order extending the date for Complaint Counsel's reply in support of summary decision.

ORDER EXTENDING COMPLAINT COUNSEL'S REPLY DATE

On September 13, 2021, Complaint Counsel filed an expedited motion asking the Commission to extend until October 8, 2021, the deadline for Complaint Counsel to file their reply in support of summary decision. Complaint Counsel argue that Respondents, in Respondents' Opposition to Summary Disposition and Reply Findings of Fact, Conclusions of Law, and Brief (Sept. 10, 2021), have asserted a host of new facts and for the first time have articulated a very narrow interpretation of their Rule 3.12(b)(2) admissions. Complaint Counsel assert that it would not be possible to prepare a thorough response to Respondents' new factual and legal claims by the original reply date of September 20, 2021. Respondents, in turn, argue that Complaint Counsel have not "demonstrated" good cause for an extension, as they did not provide any affidavits or evidence or cite other commitments that would interfere with the completion of the reply. Respondents' Response to Complaint Counsel's Expedited Motion to Extend Complaint Counsel's Reply Date at 2 (Sept. 17, 2021).

Affidavits and extrinsic evidence, however, are not necessary. Complaint Counsel have explained with sufficient specificity that, because they must address Respondents' new position that disputes a number of central allegations in the Complaint—a position Respondents chose not to articulate when presented with opportunities to do so earlier—the short timeframe for a reply is insufficient. Pursuant to Commission Rule 4.3(b), 16 C.F.R. § 4.3(b), we have determined that good cause exists to extend the deadline for Complaint Counsel's submission. Accordingly,

IT IS HEREBY ORDERED that Complaint Counsel's reply in support of summary decision shall be due on October 8, 2021.

By the Commission.

Interlocutory Orders, Etc.

IN THE MATTER OF

HACKENSACK MERIDIAN HEALTH, INC.

AND

ENGLEWOOD HEALTHCARE FOUNDATION

Docket No. 9399. Order, September 24, 2021

Order granting in part to defer the commencement of the evidentiary hearing.

ORDER GRANTING FOURTH CONTINUANCE

On September 14, 2021, Complaint Counsel and Respondents Hackensack Meridian Health, Inc. (“HMH”) and Englewood Healthcare Foundation (“Englewood”) jointly moved to defer commencement of the evidentiary hearing in this proceeding until thirty days after the United States Court of Appeals for the Third Circuit renders its judgment on Respondents’ appeal of the August 4, 2021 order by the United States District Court for the District of New Jersey granting a preliminary injunction requested by Complaint Counsel. Joint Expedited Motion for Further Continuance of Administrative Proceedings Pending Federal Court Appeal of Order Granting Motion for Preliminary Injunction (“Joint Motion”). Complaint Counsel and Respondents further requested that interim prehearing deadlines be continued for the same period of time. We have previously granted similar requests to continue the commencement of the hearing and to defer the prehearing deadlines on May 25, 2021, July 1, 2021, and July 27, 2021. Order Granting Continuance (“May 25 Order”); Order Granting Further Continuance (“July 1 Order”); Order Granting Third Continuance (“July 27 Order”). For reasons similar to those expressed in these prior orders, we have determined to defer commencement of the evidentiary hearing as requested by the parties.

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 District Court granted that preliminary injunction on August 4, 2021. Respondents have appealed the preliminary injunction order, and briefing is scheduled to conclude on November 12, 2021. The parties state that “[i]f after all appeals in the federal court proceeding are exhausted [R]espondents continue to be preliminarily enjoined from consummating the proposed transaction, it is highly likely Respondents will abandon the transaction and this administrative proceeding will be moot.” Joint Motion at 2; *see id.* at 3.

The parties argue that granting the requested continuance and extending prehearing deadlines would protect the parties and third parties and their witnesses from unnecessary burdens and expense, without prejudicing the Commission. *Id.* at 1-5; *see* May 25 Order at 1-2. We found these arguments persuasive in granting prior continuances in this proceeding. *See* May 25 Order; July 1 Order; July 27 Order.