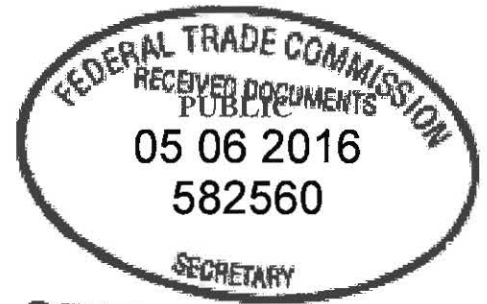


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



ORIGINAL

In the Matter of

The Penn State Hershey Medical Center,
a corporation,

and

PinnacleHealth System,
a corporation,

Respondents.

DOCKET NO. 9368

**ORDER GRANTING SECOND JOINT MOTION TO AMEND THE
SCHEDULING ORDER, AND SECOND REVISED SCHEDULING ORDER**

On May 4, 2016, Federal Trade Commission (“Commission”) Complaint Counsel and Respondents Penn State Hershey Medical Center and PinnacleHealth System (collectively, “the Parties”) filed a Joint Motion to Amend the Scheduling Order. Trial in this matter is scheduled to begin on May 17, 2016.

In their Joint Motion, the Parties state that the judge in the related case in the United States District Court for the Middle District of Pennsylvania, Judge John E. Jones III, has committed, to the best of his ability, to issue an opinion on the preliminary injunction motion before the administrative hearing begins. Judge Jones stated: “It is my intention to and I’ll make every effort to render a determination by the . . . scheduled start of the administrative proceeding. I understand that that’s important to everybody, and so I’m going to make every attempt to do that.” Hearing Transcript at 995:6-10, Apr. 15, 2016.

In light of Judge Jones’ statement, the Parties previously asked to move certain pre-hearing deadlines to the week of May 9, 2016. *See* Revised Scheduling Order, issued April 25, 2016. On May 4, 2016, the Parties filed a joint expedited motion to the Commission for a continuance of the commencement of the administrative hearing to June 7, 2016. In their motion to the Commission, the Parties represented that the outcome of the federal proceeding may

render the administrative trial moot¹ and asserted that granting a brief continuance would avoid imposing significant expense and burden on the numerous nonparties whose confidential information has been designated for use in the administrative trial and who may appear to testify at the trial.

In the instant Joint Motion, the Parties assert that they have collectively identified trial exhibits from over 50 nonparties and that granting a brief extension of the pre-hearing deadlines could avoid a significant amount of potentially unnecessary inconvenience and expense for these nonparties. Based on the foregoing, there is good cause for the requested extensions. *See* 16 C.F.R. § 3.21(c)(2).

Accordingly, the Joint Motion is GRANTED. The Scheduling Order is hereby revised as follows:


- May 17, 2016 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s).
- May 17, 2016 - Deadline for filing motions *in limine* to preclude admission of evidence.
- May 17, 2016 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- May 17, 2016 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- May 17, 2016 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.
- May 17, 2016 - Complaint Counsel files pretrial brief supported by legal authority.
- May 17, 2016 - Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
- May 17, 2016 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- May 17, 2016 - Exchange proposed stipulations of law, facts, and authenticity.

¹ The Parties explained: "If the preliminary injunction is granted, Respondents intend to abandon the proposed transaction. If the preliminary injunction is denied, the administrative proceeding will be automatically stayed or withdrawn at the request of Respondents under the recent revisions to Rule 3.26 of the Commission's Rules of Practice."

- May 17, 2016 - Respondents' Counsel file pretrial brief supported by legal authority.
- May 17, 2016 - File final stipulations of law, facts, and authenticity.
- May 17, 2016 - Final prehearing conference to begin at 9:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.
- May 17, 2016 - Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

All of the Additional Provisions in the January 13, 2016 Scheduling Order shall remain in effect.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: May 6, 2016

Notice Of Electronic Service

I hereby certify that on May 06, 2016, I filed an electronic copy of the foregoing Order Granting Second Joint Motion to Amend Scheduling Order, and Second Revised Scheduling Order, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on May 06, 2016, I served via E-Service an electronic copy of the foregoing Order Granting Second Joint Motion to Amend Scheduling Order, and Second Revised Scheduling Order, upon:

William Efron
Regional Director
Federal Trade Commission
wefron@ftc.gov
Complaint

Ryan Harsch
Attorney
Federal Trade Commission
rharsch@ftc.gov
Complaint

Jared Nagley
Attorney
Federal Trade Commission
jnagley@ftc.gov
Complaint

Jonathan Platt
Attorney
Federal Trade Commission
jplatt@ftc.gov
Complaint

Gerald Stein
Attorney
Federal Trade Commission
gstein@ftc.gov
Complaint

Gerilyn Trujillo
Attorney
Federal Trade Commission
gtrujillo@ftc.gov
Complaint

Nancy Turnblacer
Attorney
Federal Trade Commission

nturnblacer@ftc.gov
Complaint

Theodore Zang
Attorney
Federal Trade Commission
tzang@ftc.gov
Complaint

Adrian Wager-Zito
JONES DAY
adrianwagerzito@jonesday.com
Respondent

Toby Singer
JONES DAY
tgsinger@jonesday.com
Respondent

Kenneth Field
JONES DAY
kfield@jonesday.com
Respondent

Julia McEvoy
JONES DAY
jmcevoy@jonesday.com
Respondent

William Coglianesi
JONES DAY
wcoglianesi@jonesday.com
Respondent

Christopher Thatch
JONES DAY
cthatch@jonesday.com
Respondent

Peggy Bayer Femenella
Attorney
Federal Trade Commission
pbayer@ftc.gov
Complaint

James W. Frost
Attorney
Federal Trade Commission
jfrost@ftc.gov
Complaint

Lynda Lao
Attorney
Federal Trade Commission
llao1@ftc.gov
Complaint

Dana Gross
Attorney