

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Rebecca Kelly Slaughter, Acting Chairwoman**
 Noah Joshua Phillips
 Rohit Chopra
 Christine S. Wilson

In the Matter of

**Hackensack Meridian Health, Inc.,
a corporation,**

and

**Englewood Healthcare Foundation,
a corporation.**

DOCKET NO. 9399

ORDER GRANTING CONTINUANCE

On May 20, 2021, Complaint Counsel and Respondents Hackensack Meridian Health, Inc. (“HMH”) and Englewood Healthcare Foundation (“Englewood”) moved to postpone by 30 days the commencement of the administrative hearing in this proceeding, currently scheduled to begin on June 15, 2021, and to stay all pre-hearing deadlines by corresponding 30-day periods. Joint Expedited Motion for a Continuance of Administrative Proceedings (“Joint Motion”) at 1, 4.

This Joint Expedited Motion follows the Commission’s issuance on December 3, 2020, of 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 closing arguments are scheduled for June 2, 2021. The parties anticipate a decision in the federal district court action within the next several months. *Id.* 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 review voluminous documents, submit line-by-line proposed redactions of confidential information, and prepare legal memoranda requesting *in camera* treatment of those materials. *Id.* at 3. Furthermore, all parties will have to bear the expense of preparing for a full trial, including document and data review and motion practice. *Id.* And party and third-party witnesses face the burden and disruption of preparing to testify

and testifying. *Id.* According to the parties, these witnesses include operators of hospitals and clinicians, whose burdens are of particular concern during a time of global pandemic. *Id.* at 2.

Commission Rule 3.41(f) provides, in relevant part, 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 rule reflects the Commission’s commitment to move forward as expeditiously as possible with its administrative hearings. *See, e.g.*, 16 C.F.R. §§ 3.1, 3.11(b)(4), 3.41(b).

Yet, as we have explained in the past, the public interest is not ideally served if litigants and third parties bear expenditures that later prove unnecessary. *See, e.g., In re Sanford Health*, Docket No. 9376, 2017 WL 5845596, at *1 (F.T.C. Nov. 21, 2017). Commission Rule 3.41(b) authorizes the Commission to delay a hearing date, upon a showing of good cause. 16 C.F.R. § 3.41(b). Under the circumstances presented, we find that the requested continuance and the extension of pre-hearing deadlines are justified. Deferring the start of trial and extending pre-hearing deadlines by 30 days 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); *Sanford Health*, 2017 WL 5845596; *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 July 15, 2021, and that, unless modified by the Chief Administrative Law Judge, all related pre-hearing deadlines shall be extended by 30 days.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: May 25, 2021