

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

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

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

and

**Englewood Healthcare Foundation,
a corporation.**

DOCKET NO. 9399

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.

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. For the reasons stated in our May 25, July 1, and July 27 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 unnecessary burden and expense.

Because we are not rescheduling the evidentiary hearing to commence on a specific calendar day, a delay of prehearing deadlines by the same interval would create uncertainty. Consequently, we will continue all prehearing deadlines for sixty days, with the understanding that the Chief Administrative Law Judge can further adjust those deadlines if that proves appropriate.

Accordingly,

IT IS HEREBY ORDERED that the Joint Expedited Motion for Further Continuance of Administrative Proceedings Pending Federal Court Appeal of Order Granting Motion for Preliminary Injunction is **GRANTED IN PART**;

IT IS FURTHER ORDERED that the evidentiary hearing in this proceeding shall commence at 10:00 a.m. on the first working day that is at least 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; and

IT IS FURTHER ORDERED that unless modified by the Chief Administrative Law Judge, all related prehearing deadlines shall be extended by sixty (60) days.

By the Commission.



April J. Tabor
Secretary

SEAL:

ISSUED: September 24, 2021