

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

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In the Matter of )  
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Hackensack Meridian Health, Inc., )  
 a corporation, ) Docket No. 9399  
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 and )  
 )  
Englewood Healthcare Foundation, )  
 a corporation, )  
 )  
 Respondents. )  

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**SCHEDULING ORDER**

- February 2, 2021 - Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
- February 9, 2021 - Respondents' Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
- February 16, 2021 - Complaint Counsel provides expert witness list.
- February 23, 2021 - Respondents' Counsel provides expert witness list.
- March 8, 2021 - Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
- March 26, 2021 - Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
- April 9, 2021 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.

April 16, 2021 - Deadline for Complaint Counsel to provide expert witness reports.

April 27, 2021 - Complaint Counsel provides to Respondents' Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

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to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b)!<sup>1</sup>

- May 20, 2021 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- May 24, 2021 - Deadline for filing motions in limine to preclude admission of evidence. See Additional Provision 13.
- May 24, 2021 - Deadline for filing motions for

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To the extent the parties have agreed to stipulate to any issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ one business day prior to the conference. At the conference, the parties' list of stipulations shall be marked as "JX1" and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

June 15, 2021 - Commencement of Hearing, to begin at 10:00 Eastern Time.

#### ADDITIONAL PROVISIONS

1. For any correspondence to the Office of Administrative Law Judges that is required, the parties shall use electronic mail to the following email address: OALJ@FTC.GOV.

2. The parties shall serve each other by electronic mail and shall include "Docket 9399" in the re: line and all attached documents in .pdf format. In the event that service through electronic mail is not possible, the parties may serve each other through any method authorized under the Commission's Rules of Practice.

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss, motion for summary decision, or a motion for in camera treatment) shall be accompanied by a separate signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. In addition, pursuant to Rule 3.22(g), for each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or each motion for sanctions pursuant to § 3.38(b), the required signed statement must also [(am6hl)3 (



video at least five days in advance of the deposition. The parties shall work in good faith, in light of the public-health emergency, to develop appropriate protocols for remote depositions. No deposition, whether recorded by video or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge.

10. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas ~~duces tecum~~ and subpoenas ~~ad testificandum~~. For subpoenas ~~ad testificandum~~, the party seeking the deposition shall consult with the other parties before the time and place of the deposition is scheduled. The parties need not separately notice the deposition ~~party~~ non-noticed by an opposing party. If both sides notice any non-party fact deposition, the time and allocation for the deposition shall be divided evenly between them. For any non-party deposition noticed by only one side, the non-noticing side shall be allocated one and a half hours of deposition time for cross or ~~cross~~ testimony. Unused time in any side's allocation of deposition time may be used by the other side.

11. Nonparties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within 3 business days of receiving the documents. No deposition of a non-party shall be scheduled between the time a non-party provides documents in response to a subpoena ~~duces tecum~~ to a party, and 3 business days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition, as agreed to by all parties involved.

12. If a party intends to offer confidential materials of an opposing party or non-party as evidence at the hearing, in providing notice to such ~~party~~, the parties are required to inform each non-party of the strict standards for motion ~~in camera~~ treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained In re Otto Bock Healthcare N. Am., 2018 WL 3491602 at \*1 (July 2, 2018); and In re ~~800~~ Contacts, Inc., 2017 FTC LEX, 12 (y)/TT1 1 3y mn



(c) It shall be the responsibility of party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information relied on by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation for hearing and who is not designated by a party as a testifying witness.

(f) At the time of service of the expert reports, a party shall provide opposing counsel:

(i) a list of all commercially available computer programs used by the expert in the preparation of the report;

(ii) a copy of all data sets used by the expert, in native file format and processed data file format; and

(iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

(g) Experts' disclosures and reports shall comply in all respects with Rule 3.31A, except that neither side must preserve or disclose:

(i) any form of communication or work product shared between any of the parties' counsel and their expert(s), or between any of the experts themselves;

(ii) any form of communication or work product shared between an expert(s) and persons assisting the expert(s);

(iii) expert's notes, unless they constitute the only record of a fact or an assumption relied upon by the expert in formulating an opinion in this case;

(iv) drafts of expert reports, analyses, or other work product; or

(v) data formulations, data runs, data analyses, or any database operations not relied upon by the expert in the opinions contained in his or her final report.

19. If the expert reports prepared for either party contain confidential information that has been granted camera treatment, the party shall prepare two versions of its expert report(s) in accordance with 16 C.F.R. § 3.45(e).

20. Due to ongoing public health concerns related to COVID-19, and in the likely event that the evidentiary hearing in this matter will be conducted remotely by video conference, the



perpetuating trial testimony (i.e., a trial deposition) and to submit such trial testimony as an exhibit in lieu of presenting the expert's testimony via live video at trial. This trial deposition may be conducted in addition to any deposition of an expert witness for purposes of discovery (discovery deposition). Although the parties are encouraged to submit trial depositions in lieu of live video testimony at trial for all expert witnesses in the case, you may choose to do trial depositions for all or fewer than all experts.

21. An expert witness' testimony is limited to opinions contained in the expert report that has been previously and properly provided to the opposing party. In addition, no opinion will be considered, even if included in an expert report, if the underlying and supporting documents and information have not been properly provided to the opposing party. If an expert witness is qualified as a fact witness, an expert witness is only allowed to provide opinion testimony; expert testimony is not considered for the purpose of establishing the underlying facts of the case.

22. The final exhibit lists shall represent counsel's good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

23. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and shall not be read in open court to provide that testimony, but may be used in the examination of live witnesses. Admitted deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

24. The parties shall provide to one another, and to the Administrative Law Judge and the court reporter, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or unforeseen circumstances.

25. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

26. Complaint Counsel's exhibits shall bear the designation PX and Respondents' exhibits shall bear the designation RX or some other appropriate designation. Complaint Counsel's demonstrative exhibits shall bear the designation PXD and Respondents' demonstrative exhibits shall bear the designation RXD or some other appropriate designation. If demonstrative exhibits are used with a witness, the exhibit will be marked and referred to for identification only. Any demonstrative exhibits referred to by any witness may be included in the trial record, but they are not part of the evidentiary record and may not be cited to support any disputed fact. Both sides shall number the first page of each exhibit with a single series of

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