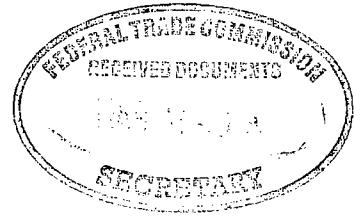


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the matter of)
)
)

EVANSTON NORTHWESTERN HEALTHCARE)
CORPORATION,)
)

and)
)

ENH MEDICAL GROUP, INC.,)
Respondents.)
_____)

Docket No. 9315

SCHEDULING ORDER

- April 13, 2004 - Complaint Counsel provides preliminary witness list (not including experts) with description of proposed testimony.
- April 15, 2004 - Respondents shall object and respond to Complaint Counsel's First Requests for Production of Documents.
- April 19, 2004 - Respondents' Counsel provides preliminary witness list (not including experts) with description of proposed testimony.
- May 14, 2004 - Complaint Counsel provides expert witness list.
- May 21, 2004 - Respondents' Counsel provides expert witness list.
- June 4, 2004 - Deadline for issuing document requests, requests for admission, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
- June 14, 2004 - Complaint Counsel provides revised witness lists, including preliminary rebuttal fact witnesses, with description of proposed testimony (excluding experts).

- June 18, 2004 - Respondent's Counsel provides revised witness lists, including preliminary rebuttal fact witnesses, with description of proposed testimony (excluding experts).
- July 7, 2004 - Deadline for filing motions for summary decision.
- July 12, 2004 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), expert depositions, and discovery for purposes of authenticity and admissibility of exhibits.
- July 16, 2004 - Complaint Counsel provides expert witness reports.
- July 23, 2004 - Deadline for filing responses to motions for summary decision.
- July 27, 2004 - Respondents' Counsel provides expert witness reports.
- August 3, 2004 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert reports. If material outside the scope of fair rebuttal is presented, Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit sur-rebuttal expert reports on behalf of Respondents).
- August 3, 2004 - Complaint Counsel provides to Respondents' Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative, or summary exhibits), and a brief summary of the testimony of each witness.

Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- August 6, 2004 - Respondents' Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative, or summary exhibits), and a brief summary of the testimony of each witness.

Respondents' Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- August 9, 2004 - Parties that intend to offer into evidence at the hearing

confidential materials of an opposing party or non-party must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).

- August 16, 2004 - Deadline for filing motions *in limine* and motions to strike.
- August 19, 2004 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- August 23, 2004 - Deadline for filing responses to motions *in limine* and motions to strike.
- September 2, 2004 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- September 15, 2004 - Exchange proposed stipulations of law, facts, and authenticity.
- September 17, 2004 - Parties file pretrial briefs.
- September 20, 2004 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- September 22, 2004 - Final prehearing conference. The parties are to meet and confer prior to the conference regarding trial logistics; proposed stipulations of law, facts, and authenticity; and admissibility of any designated deposition testimony. Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition. Trial exhibits will be admitted or excluded at this conference, to the extent practicable.
- September 29, 2004 - Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C.

ADDITIONAL PROVISIONS

1. Pursuant to Rule 3.21(c)(2), extensions or modifications to these deadlines will be made only upon a showing of good cause.
2. Service of all papers filed with the Commission shall be made on opposing counsel and two courtesy copies to the Administrative Law Judge by 5:00 p.m. on the designated date. Unless requested, the parties shall not serve courtesy copies on the ALJ of any papers (including discovery requests and responses) that are not required to be filed with the Office of the Secretary. *See* Commission Rules 3.31(b), 3.35, 3.37.

3. Service by the parties on the parties shall be by electronic mail (formatted in WordPerfect or Word) and shall be followed promptly by delivery of an original by hand or by U.S. mail, first class postage prepaid, to the following addresses:

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4. All pleadings that cite to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

5. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off, that all responses and objections will be due on or before that date, unless otherwise noted. Any motion to compel responses to discovery requests shall be filed within 5 days of impasse if the parties are negotiating in good faith and are not able to resolve their dispute.

6. The parties are limited to a total 50 document requests, 50 interrogatories, and 50 requests for admissions, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. There is no limit on the number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Additional discovery may be permitted only for good cause upon application to and approval by the Administrative Law Judge. Unless otherwise agreed to by the parties, responses and objections to document requests, interrogatories, and requests for admissions shall be due within 20 days of service.

7. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intentions to record the deposition by videotape at least five days in advance of the deposition.

8. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. Counsel scheduling depositions shall immediately notify all other counsel that a deposition has been scheduled.

Non-parties 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 five business days of receiving the documents.

9. The preliminary, revised, and final witness lists shall represent counsel's good faith designation of all potential witnesses. Additional witnesses may be added after the submission of the final witness lists only under the following circumstances:

- (a) by agreement of counsel with notice to the Administrative Law Judge;
- (b) by order of the Administrative Law Judge upon showing of good cause; or
- (c) if needed, to authenticate or provide evidentiary foundation for documents in dispute, with notice to the opposing party and the Administrative Law Judge.

A party seeking to add witnesses after submission of the final witness lists shall promptly notify the other parties of its intention to do so, to facilitate completion of discovery within the dates of the scheduling order. Opposing counsel shall have a reasonable amount of time to subpoena documents for and depose any witness added to the witness list pursuant to this paragraph, even if the discovery takes place during the hearing. Such discovery shall not be subject to the return/response otherwise ordered scheduling or notice provisions of paragraph 5 or the minimum period for subpoena/discovery requests of this paragraph unless by the Administrative Law Judge.

A party may depose any witness identified on the final witness list of the opposing party who was not identified on the preliminary witness list.

10. The final exhibit list shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after submission of the final lists only: (a) by order of the Administrative Law Judge upon a showing of good cause; (b) by agreement of counsel with notice to the Administrative Law Judge; or (c) where necessary for purposes of impeachment.

11. At the time an expert is first listed as a witness by a party, the party will provide to the other party:

- (a) materials fully describing or identifying the background and qualifications of the expert, and all prior cases in which the expert has testified or been deposed.
- (b) transcripts of such testimony in the possession, custody, or control of the listing party or the expert, subject to any confidentiality orders entered in prior litigation.
- (c) This paragraph shall not require the production of materials in litigation to which the expert was a party.

At the time an expert report is produced, the listing party will provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case. Unless otherwise agreed by the parties, drafts of expert reports need not be produced.

Each expert report shall include the subject matter on which the expert is expected to testify and the substance of the facts and opinion to which the expert is expected to testify and a summary of the grounds of each opinion.

It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition from August 9, 2004, through September 17, 2004. Unless otherwise agreed by the parties or ordered by the Administrative Law expert witness shall be deposed only once and each expert deposition shall be limited to seven hours.

12. Applications for the issuance of subpoenas commanding a person to attend and give testimony at the adjudicative hearing must comply with 16 C.F.R. § 3.34, must demonstrate that the subject is located in the United States, and must be served on opposing counsel.

13. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F. R. Evid. 602.

14. Witnesses not properly designated as expert witnesses shall not be allowed to provide opinions beyond what is allowed in F. R. Evid. 702. F. R. Evid. 701.

15. Properly admitted deposition testimony is part of the record and may not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court.

16. Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000) and must be supported by a declaration or affidavit by a person qualified to explain the nature of the documents.


17. The procedure for marking of exhibits referred to in the adjudicative proceeding shall be as follows: both parties shall number their exhibits with a single series of consecutive numbers. Complaint Counsel's exhibits shall bear the designation CX and Respondent's exhibits shall bear the designation RX. (For example, the first exhibit shall be marked CX-1 for Complaint Counsel.) When an exhibit consists of more than one piece of paper, each page of the exhibit must bears a consecutive bates number or some other consecutive page number.

All exhibit numbers must be accounted for, even if a particular number is not actually used at trial. If a party selects certain, but not all, documents that it previously designated as deposition exhibits, the party must indicate that certain numbers were not used in the numbering process for designating trial exhibits. For example, if Complaint Counsel decided to not introduce at trial documents previously marked at deposition as exhibits CX-2, CX-4, and CX-6, Complaint Counsel's list of exhibits would begin CX-1, CX-3, and CX-5. This method of numbering exhibits for trial is acceptable, as long as the party also prepares a list of its exhibits indicating that CX-2, CX-4, and CX-6 were never designated as trial exhibits. Using this example, in preparing the set of original exhibits to give to the court reporter, Complaint Counsel must indicate that CX-2, CX-4, and CX6 were never designated as trial exhibits by inserting in their place a piece of paper or tab indicating that such exhibit numbers were not used.

18. The parties shall provide one another, and the Administrative Law Judge, no later that seventy-two hours in advance, a schedule that identifies by day the party's best estimate of the witnesses to be called to testify during the upcoming week of the hearing. The parties further shall provide one another with copies of any demonstrative exhibits twenty-four hours before they are used with a witness.

19. At the final pre-hearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. Counsel will also be required to give *the originals* of exhibits to the court reporter, which the court reporter will keep.

ORDERED:


Stephen J. McGuire
Chief Administrative Law Judge

Date: March 24, 2004