

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

PIEDMONT HEALTH ALLIANCE, INC.,
a corporation,

and

PETER H. BRADSHAW, M.D.,
S. ANDREWS DEEKENS, M.D.,
DANIEL C. DILLON, M.D.,
SANFORD D. GUTTLER, M.D.,
DAVID L. HARVEY, M.D.,
JOHN W. KESSEL, M.D.,
A. GREGORY ROSENFELD, M.D.,
JAMES R. THOMPSON, M.D.,
ROBERT A. YAPUNDICH, M.D.,
and WILLIAM LEE YOUNG III, M.D.,
individually

Docket No. 9314

**RESPONDENT PIEDMONT HEALTH ALLIANCE'S MOTION FOR LEAVE TO FILE
RESPONSE TO COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENT
PIEDMONT HEALTH ALLIANCE'S MOTION TO LIMIT OR QUASH SUBPOENA
DUCES TECUM TO ORLIKOFF & ASSOCIATES, INC.**

Pursuant to Commission Rule 3.22(c), Respondent Piedmont Health Alliance ("PHA") respectfully moves for leave to file a response to Complaint Counsel's Opposition To Respondent Piedmont Health Alliance's Motion To Limit Or Quash Subpoena Duces Tecum To Orlikoff & Associates ("Complaint Counsel's Opposition"). This response is necessary for two reasons. First, PHA seeks leave to respond to Complaint Counsel's inadvertent disclosure arguments raised for the first time in Complaint Counsel's Opposition. Second, PHA seeks leave

the March 12 letter has been limited. Furthermore, PHA's counsel asked Complaint Counsel to segregate the document in order to ensure its confidentiality.⁵ Finally, PHA will show that fundamental fairness requires a finding that the disclosure of the March 12 document was inadvertent, and that no waiver occurred.

II.

PHA also seeks leave to reply to Complaint Counsel's Opposition to the extent its arguments are based on the Declaration of James E. Orlikoff, filed in support of Complaint Counsel's Opposition. Mr. Orlikoff is the recipient of the March 12 letter that is the subject of PHA's Motion to Limit or Quash filed with this Court on February 13, 2004.

PHA's response is necessary because Mr. Orlikoff apparently has little recollection of his relationship with PHA, and his Declaration contains numerous inconsistencies with PHA's understanding of certain facts critical to the outcome of this case. The declaration of PHA's Chief Executive Officer, Sharon J. Alvis, illustrates these inconsistencies, examples of which include Ms. Alvis' and Mr. Orlikoff's respective understandings concerning the confidentiality of the March 12 letter, and why Mr. Orlikoff was provided with the information contained in the March 12 letter. *Compare* Alvis Decl. ¶¶ 4-5, 8-11, 13, *with* Orlikoff Decl. ¶¶ 3, 9, 14, 16.

Moreover, PHA requests further leave to supplement its response on or before March 9, 2004. The return date of the Subpoena was February 24, 2004, and pursuant to the Scheduling Order, Complaint Counsel must provide copies of these materials to PHA by Tuesday, March 2. The five additional business days would give PHA the opportunity to review Mr. Orlikoff's documents and thus respond fully to Complaint Counsel's Opposition.

⁵ PHA made this request by letter dated January 9, 2004 from Nicholas R. Koberstein to David M. Narrow. *See* Respondent's Reply, Attachment 8. This request was timely, considering that PHA received Complaint Counsel's notice concerning the potentially privileged documents at issue at approximately 4:00 p.m. on New Year's Eve, December 31, 2003, and telephoned Complaint Counsel to discuss the issue on January 5, 2004. *See* Respondent's Reply, Attachment 5.

III.

For the foregoing reasons, PHA respectfully requests that Your Honor grant PHA leave to file its Reply, which is attached hereto. Complaint Counsel have not consented to this motion.

Dated: February 26, 2004

Respectfully submitted,

By: _____

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ATTORNEYS FOR PHA

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**ORDER GRANTING RESPONDENT PIEDMONT HEALTH ALLIANCE'S MOTION
FOR LEAVE TO FILE RESPONSE TO COMPLAINT COUNSEL'S OPPOSITION TO
RESPONDENT PIEDMONT HEALTH ALLIANCE'S MOTION TO LIMIT OR QUASH
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I.

Upon motion of Respondent Piedmont Health Alliance for leave to file a response to Complaint Counsel's Opposition to Respondent Piedmont Health Alliance's Motion To Limit Or Quash Subpoena Duces Tecum To Orlikoff & Associates, Inc., ("Complaint Counsel's Opposition") filed herein, on February ___ 2004, it is

ORDERED that PHA's Motion for leave to respond to Complaint Counsel's Opposition and the same hereby in all respects granted.

ORDERED:

D. Michael Chappell
Administrative Law Judge