

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

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DOCUMENT PROCESSING

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

**EXPEDITED JOINT MOTION OF
COMPLAINT COUNSEL AND RESPONDENTS
FOR REVISED SCHEDULING ORDER**

Complaint Counsel and Respondents jointly seek a Revised Scheduling Order modifying the Scheduling Order issued by Your Honor on January 30, 2004 ("Scheduling Order"). Despite diligent efforts by both parties to cooperate with one another in order to streamline the discovery process, it will be almost impossible to complete fact discovery by the May 3, 2004 deadline established by the Scheduling Order. Complaint Counsel and Respondents have agreed to the attached Joint Proposed Revised Scheduling Order. The proposed order would extend the deadline for fact discovery until May 21, 2004. It would similarly extend several other deadlines, but the proposed joint modifications would only mildly impact the scheduled commencement of trial.

I. The Current Deposition Schedule

On April 1, 2004, Complaint Counsel served a Revised Witness List containing 65 witnesses. Respondents, in turn, served a Revised Witness List on April 6, 2004 cross-naming most of the witnesses on Complaint Counsel's list, in addition to 15 new witnesses. Most of these witnesses received subpoenas *ad testificandum*. The parties have already conducted 6 depositions.

Recognizing the volume of depositions contemplated, the parties endeavored to reduce the number of depositions necessary. On April 9, 2004, the parties agreed to strike 5 witnesses, obviating the need for depositions. Moreover, the parties continue to participate in discussions with the worthy goal of limiting the number of depositions even further. In addition, Respondents continue to seek out informal deposition alternatives. The parties have every intent to continue this type of collaboration and cooperation.

Nevertheless, before the close of fact discovery on May 3, 2004, there remain 42 depositions presently scheduled, and approximately 30 depositions noticed but not yet scheduled. Including Saturdays, there are only 18 workdays left before the close of fact discovery. Even without taking into account the schedules' of the witnesses, the parties would need to conduct an average of 4-depositions-per day, to complete the depositions. Neither party has the resources available to complete this task.

II. Cumbersome Discovery Disputes Have Been Avoided

Complaint Counsel and Respondents appreciate that Your Honor may be concerned that by extending the deadline for discovery, the opportunity for protracted and technical discovery disputes requiring Your Honor's resolution increases. Yet in the general spirit of cooperation that has marked our relationship thus far, Complaint Counsel and Respondents have avoided burdening the court with many discovery disputes, only seeking the court's attention when all methods of independent resolution were exhausted. We intend to continue this approach so that granting this Joint Motion will not have the effect of burdening Your Honor with additional discovery disagreements between the parties.

III. Proposed Joint Modifications

A Joint Proposed Revised Scheduling Order is attached. Although the Joint Proposed Revised Scheduling Order extends fact discovery by three weeks, we have compressed other areas of the pretrial process, leading to commencement of the trial just two weeks after the date presently contemplated by the Scheduling Order. In preparing the Joint Proposed Revised Scheduling Order, the parties worked closely to mirror as much of the structure under the existing order as possible.

To wit, Complaint Counsel and Respondents seek modifications to include:

- Shifting the close of discovery to May 21, 2004.
- Complaint Counsel provides their expert witness reports on May 28, 2004.
- Respondents provide their expert witness reports on June 14, 2004.
- The deadline for filing for summary decision occurs on June 18, 2004.
- The deadline for filing responses, including any opposing affidavits, statement of facts, and briefs, to motions for summary decision, occurs on July 7, 2004.
- The deadline for filing of pretrial briefs, to include proposed findings of fact and conclusions of law, occurs on July 19, 2004.
- The final prehearing conference occurs on August 5, 2004.
- The Hearing commences on August 10, 2004.

V. Conclusion

For the foregoing reasons, Complaint Counsel and Respondents submit they have demonstrated good cause to amend the scheduling order and respectfully request Your Honor GRANT the Joint Proposed Revised Scheduling Order.

Date: April 12, 2004

By: Markus H. Meier by GMA

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**JOINT PROPOSED
REVISED SCHEDULING ORDER**

On April 12, 2004, the parties filed a Joint Motion to Modify the Scheduling Order. The motion is GRANTED. The revised Scheduling Order is as follows:

- | | | |
|---------------|---|---|
| May 21, 2004 | - | Close of discovery, other than depositions of experts and discovery for purposes of authenticity and admissibility of exhibits. |
| May 28, 2004 | - | Complaint Counsel provides expert witness reports. |
| June 14, 2004 | - | Respondents' Counsel provides expert witness reports. |
| June 18, 2004 | - | Deadline for filing motions for summary decision. |
| June 28, 2004 | - | Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s), if any. 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).

July 7, 2004

- Deadline for filing responses, including any opposing affidavits, statements of facts, and brief, to motions for summary decision.

July 9, 2004

- Deadline for depositions of experts (including rebuttal experts).

Exchange (1) final proposed witness lists with a brief summary of the testimony of each witness; (2) final exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative or summary exhibits).

Serve courtesy copies on ALJ of: (1) final proposed witness lists with a brief summary of the testimony of each witness; and (2) final exhibit lists.

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).

July 16, 2004

- Deadline for filing motions *in limine* and motions to strike.

Deadline for filing motions for *in camera* treatment of proposed trial exhibits.

July 19, 2004

- Parties file pretrial briefs, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.

July 26, 2004

- Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists. Exchange objections to the designated testimony to be presented by deposition and counter designations.

- July 30, 2004 - Exchange proposed stipulations of law, facts, and authenticity.
- August 3, 2004 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.
- August 5, 2004 - Final prehearing conference to be held at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C.

The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and 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.

- August 10, 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.

The "Additional Provisions" set forth in the Scheduling Order entered on January 30, 2004 remain unchanged.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Date: April ____, 2004

CERTIFICATE OF SERVICE

I, Andrea M. Agathoklis, hereby certify that on April 12, 2004:

I caused two copies of the Expedited Joint Motion of Complaint Counsel and Respondents for Revised Scheduling Order, to be served by hand delivery upon the following person:

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room H-104
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

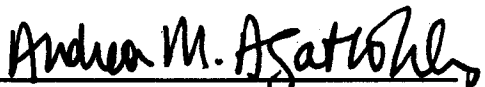
I caused two copies of the Expedited Joint Motion of Complaint Counsel and Respondents for Revised Scheduling Order to be served by hand delivery and followed by electronic mail transmission, upon the:

Office of the Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

I caused one copy of the Expedited Joint Motion of Complaint Counsel and Respondents for Revised Scheduling Order to be served by via electronic mail transmission, and followed by U.S. mail delivery, to the following persons:

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