



intended in the Part 3 Rules—to mitigate harm to Louisiana residents and assure efficient and timely resolution.

### ARGUMENT

Rule 3.22(b) provides that “[a] motion under consideration by the Commission shall not stay proceedings before the Administrative Law Judge unless the Commission so orders or unless otherwise provided by applicable rule.” The purpose of Rule 3.22(b) is “to ensure that discovery and other prehearing proceedings continue while the Commission deliberates over the dispositive motions . . . [so as] to expedite the proceedings.” *re LabMD, Inc.*, No. 9357, 2013 FTC LEXIS 131, at \*4 (F.T.C. Dec. 13, 2013) (quoting FTC Rules of Practice, Interim Final Rules with Request for Comment, 74 Fed. Reg. 1804, 1809, 1810 (Jan. 13, 2009) (alterations in original)).

In 2008, when the Commission first proposed an amendment adding subsection (b) to Rule 3.22, it entitled subsection (b) “Pendency of Proceedings.” FTC Rules of Practice Proposed Rule Amendments and Request for Public Comment, 73 Fed. Reg. 58,832, 58,843 (Oct. 7, 2008). In the final rules, it made a very deliberate change, instead entitling 3.22(b) “Proceedings Not Stayed.” The Commission explained the purpose of this change in the final rules:

The Commission has revised the caption of paragraph (b) to “Proceedings not stayed,” to more accurately describe the subject matter of the paragraph . . . . The purpose of proposed paragraph (b) was to ensure that discovery and other prehearing proceedings continue while the Commission deliberates over the dispositive motion. . . .

Interim Final Rules with Request for Comment, 74 Fed. Reg. at 1810 (emphasis added). The Commission’s objective was clear: it intended that proceedings would go forward even during the pendency of dispositive motions.

Respondent argues that the potential avoida

before the Administrative Law Judge to ~~do not~~ notwithstanding the pendency of such motions." In re LabMD, 2013 FTC LEXIS 131, at \*6. To permit ~~to~~ in order to save routine expenses would arm every respondent with ~~the~~ to stymie every Commission enforcement action.

The cases cited by Respondent ~~are~~ inapposite, if only because both involved motions to stay that were unopposed. Further, the order in ~~the~~ South Carolina Dental ~~case~~ was entered in 2003, six years before Rule 3.22(b) was adopted. ~~And~~, the Commission entered the stay in Phoebe Putney ~~pending~~ the final resolution of a collateral issue ~~by~~ a state agency ~~that~~ could render a remedy in the Commission proceedings infeasible. ~~Phoebe Putney~~ did not involve a request for a stay pending resolution of a dispositive motion ~~in the~~ Commission, and thus Rule 3.22(b) was not implicated.

### CONCLUSION

There has been no showing of any unusual ~~circumstances~~ that would justify a stay in contradiction of Commission rules, policies, and procedures. ~~Accordingly~~, the request for a stay should be denied.

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<sup>3</sup> See Order Granting Respondent's Unopposed Motion for Temporary Stay of Proceedings, Phoebe Putney Health Sys., Inc. Docket No. 9348 (Oct. 30, 2014); Order Granting Respondent's Unopposed Motion to Stay Discovery In re S.C. State Bd. of Dentists Docket No. 9311 (Oct. 23, 2003).

Dated: January 12, 2018

Respectfully submitted,

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