IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 11-cv-00520-PAB-BNB

HEALTH GRADES, INC.,

Plaintiff,

v.

MDX MEDICAL, INC. d/b/a VITALS.COM,

Defendant.

PARTIES' JOINT MOTION TO ALLOW DEPOSITIONS BEYOND THE DISCOVERY CUT-OFF, AND TO MODIFY DEADLINES RELATED TO EXPERT REPORTS BY ONLY ONE WEEK

Plaintiff Health Grades, Inc. ("Health Grades"), and Defendant MDx Medical, Inc. d/b/a Vitals.com ("MDx")(collectively, the "Parties"), by their respective undersigned counsel, pursuant to Federal Rules of Civil Procedure 16(b)(4), D.C.Colo.LCivR 6.1(C) and (D), D.C.Colo.LCiv.R 7.1, and Sections 12 and 13 of the Scheduling Order in this case, respectfully submit their Joint Motion to Allow Depositions Beyond the Discovery Cut-Off, and to Modify Deadlines Related to Expert Reports by only one week, and state in support:

Conferral pursuant to D.C.Colo.LCivR 7.1(A)

Undersigned counsel have conferred with each other regarding the relief requested herein and have agreed to the relief sought in this motion.

JOINT MOTION

1. Pursuant to the Court's Order dated March 19, 2012 [Dkt. 162], the current discover cut-off deadline for this case is June 15, 2012. Initial expert reports and all information

specified in Fed. R. Civ. P. 26(a)(2) is due by June 29, 2012. Rebuttal expert reports and all information specified in Fed. R. Civ. P. 26(a)(2) is due by July 16, 2012.

2. On June 5, 6 and 7, 2012, Health Grades took the depositions of MDx officers Erika Boyer, Jeff Cutler and Mitch Rothschild, respectively. On June 12 and 13, 2012, MDx took the depositions of Health Grades' employees Brian Blackman and John Neal, respectively,

3. Two agreed upon depositions remain to be taken in the case. Two additional depositions may also need to be taken, as discussed more specifically below. Good cause exists for the requests made herein, as scheduling issues did not allow for the depositions to occur before the current discovery cutoff. The Parties have thus conferred and have agreed to schedule and take those two depositions on June 26 and June 28, 2012. Specifically, Health Grades will take the deposition of MDx's Chief Technology Officer, Mr. Larry West, on June 26, 2012, and MDx will take the deposition of Health Grades' Chief Financial Officer, Mr. Allen Dodge (also a 30(b)(6) deponent), on June 28, 2012. These two depositions will thus occur within just 13 days of the current fact discovery cutoff of June 15, 2012.

4. The two other depositions at issue are the deposition of Mr. Phil Braginsky, the author of a legal opinion upon which MDx intends to rely in defense of the willfulness allegation and of Mr. John Maldjian, who also rendered an opinion upon which Defendant intends to rely. Mr. Maldjian's opinion was produced on June 1, 2012. Both opinions are the subject of a Motion, to be filed by Health Grades today. MDx reserves all rights to object to one or both of these depositions, depending on circumstances after the Health Grades' motion is decided. The Parties have agreed, however, subject to any MDx objections, that if these depositions are to be held after resolution of the Health Grades' motion, the depositions may proceed after the current

discovery cut-off of June 15, 2012. The depositions, if necessary, will not impact expert reports or expert discovery.

5. In light of the foregoing, the Parties also agree that a one-week extension of the deadlines for expert reports is also warranted.

6. The Parties have sought amendments of the above deadlines on three previous occasions – see Docket #s 86, 132 and 160. Copies of this Motion will simultaneously be served on Health Grades and MDx by their respective undersigned counsel.

WHEREFORE, for good cause shown, the Parties jointly and respectfully request that the Court grant their Motion and order the following:

(1) Fact discovery is extended through June 28, solely for the purpose of taking the depositions of Messrs. Dodge and West. If MDx may rely on the opinion of counsel defense after Health Grades' anticipated motion, and subject to any MDx objections, the depositions referenced above may be taken at a time convenient to the Parties within one month of the Court's ruling on the Health Grades' motion.

(2) Initial expert reports and all information specified in Fed. R. Civ. P. 26(a)(2) is due by July 6, 2012

(3) Rebuttal expert reports and all information specified in Fed. R. Civ. P. 26(a)(2) is due by July 23, 2012.

The Parties respectfully request that no other deadlines be extended.

Respectfully submitted this 15th of June, 2012.

ROTHGERBER JOHNSON & LYONS LLP

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2012, I electronically filed the foregoing **PARTIES' JOINT MOTION TO ALLOW DEPOSITIONS BEYOND THE DISCOVERY CUT-OFF AND TO MODIFY DEADLINES RELATED TO EXPERT REPORTS** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-email addresses:

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