IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

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

HEALTH GRADES, INC.,

Plaintiff,

vs.

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

Defendant.

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Plaintiff Health Grades, Inc., and Defendant MDX Medical, Inc. d/b/a Vitals.com, by their respective undersigned counsel, hereby submit their Joint Claim Construction and Prehearing Statement pursuant to the Court's Scheduling Order dated June 16, 2011 [Doc. 34]:

A. Agreed Claim Constructions [Rule 4-3(a)]

The parties have not agreed on the construction of any of the claim terms, phrases or clauses listed by each of them in the chart attached hereto as Exhibit A.

B. Disputed Claim Constructions [Rule 4-3(b)]

The parties' proposed construction for each disputed claim term, phrase, or clause, and the parties' identification of references and extrinsic evidence pursuant to Rule 4-3(b) are included within the chart attached hereto as Exhibit A. MDx's extrinsic evidence is included within Exhibit B attached hereto.

C. Identification of Terms Most Significant to Resolution of the Case [Rule 4-3(c)]

MDx identifies, in no particular order, the following eight terms whose construction will be most significant to the resolution of the case:

- "first healthcare provider"

- "healthcare provider report on the first healthcare provider"

- "report on the first healthcare provider includes comparison ratings of healthcare providers"

- "healthcare provider-verified information"

- "verified by an independent third party source"

- "received from the first healthcare provider"

- "compiling" / "compile"

- "using the healthcare provider-verified information, the patient-provided information, and the information verified by an independent third-party source"

Health Grades agrees that the eight terms identified by MDx above are those whose construction will be most significant to resolution of the case, and adds the term "comparison ratings" as an additional term whose construction it believes will be significant to resolution of the case.

Among the eight terms above identified by MDx, MDx believes that the following terms may be case dispositive:

- "report on the first healthcare provider includes comparison ratings of healthcare providers"

- "compiling" / "compile"

- "using the healthcare provider-verified information, the patient-provided information, and the information verified by an independent third-party source"

Health Grades does not believe that the construction of any of the foregoing nine terms, or any other claim terms, will be case or claim dispositive.

The parties' identification of the terms above is not intended to limit them in any way with respect to claim construction in this case.

D. Length of Claim Construction Hearing [Rule 4-3(d)]

The Claim Construction Hearing has been set to occur on Thursday, January 19, 2012, from 8:30 AM to 12:00 PM. The parties believe the three and a half hour period set by the Court should be divided equally between them.

E. Witness Testimony [Rule 4-3(e)]

Neither Plaintiff nor Defendant proposes calling witnesses at the Claim Construction Hearing.

Respectfully submitted this 19th day of October, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2011, I electronically filed the foregoing **JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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