

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4412 / December 2, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17551

In the Matter of

MED-X, INC.

ORDER ON REVISED SCHEDULE AND
ADVICE-OF-COUNSEL DEFENSE

Revised Schedule

Respondent's unopposed motion for adjournment is granted insofar as the hearing currently scheduled for December 14, 2016, is postponed. The following revised procedural schedule is adopted:

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| December 28, 2016: | The parties may exchange and file amended witness and exhibit lists, and shall exchange (but not file) copies of exhibits not previously exchanged. ¹ |
| January 4, 2017: | Prehearing motions and briefs. |
| January 10, 2017: | Hearing commences at 9:30 a.m. Eastern in Hearing Room 2 at Commission Headquarters in Washington, D.C. |
| January 25-26, 2017: | Hearing continues at the same location. |

After the close of the parties' evidentiary presentation, I will establish a post-hearing schedule for the filing of briefs and exhibits. Witness lists shall include witnesses' names, occupations, addresses, and a brief summary of their expected testimony. 17 C.F.R. § 201.222(a)(4). Exhibit lists shall be emailed to my office at alj@sec.gov in Microsoft Excel or Word format and include exhibit numbers, a description of each exhibit, and Bates-stamp

¹ In emails to Respondent's counsel, on which my office was copied, the Division of Enforcement objected to Respondent's request for additional time to identify witnesses and exhibits. The Division's objection is denied. In its November 30, 2016, witness and exhibit lists, the Division "reserve[d] the right to amend and supplement [its] list[s] prior to and during the hearing." It would be unfair for the Division to be allowed to amend its lists while denying Respondent, which has recently retained new counsel, the same opportunity.

numbers, if any. Exhibits shall not be filed with the Office of the Secretary until after the hearing concludes. In addition to the required filing with the Office of the Secretary, electronic courtesy copies of filings should be emailed to alj@sec.gov in both PDF text-searchable format and, when possible, Microsoft Word format. Electronic copies of exhibits should not be combined into a single PDF file, but should be submitted as separate attachments.

Advice-of-Counsel Defense

Respondent's witness list includes, among others, its former counsel, Mark J. Richardson, Esq., and Matthew A. Mills, who serves as Respondent's chairman of the board, president, and chief operating officer. The summary of anticipated testimony of these two witnesses suggests that Respondent may intend to raise an advice-of-counsel defense with regard to its filings under Regulation A of the Securities Act of 1933.

If Respondent intends to raise an advice-of-counsel defense,² it must:

1. Disclose to the Division the nature of the defense and the identity and contact information of any counsel with whom it consulted regarding the conduct at issue in this proceeding by December 16, 2016.
2. Produce to the Division, if it has not already done so, all documents related to Respondent's advice-of-counsel defense and relevant to each element of the defense by December 19, 2016. *See Rodney R. Schoemann*, Securities Act Release No. 9076, 2009 WL 3413043, at *12 & n.41 (Oct. 23, 2009) (summarizing elements of advice-of-counsel defense). If Respondent proceeds with an advice-of-counsel defense, it will be waiving the attorney-client privilege as to all advice received concerning the same subject matter, including advice that may not support its defense.³ Any waiver of attorney-client privilege by Respondent, which holds the privilege, will be limited to the defense, and not construed as a broader waiver of privilege. To the extent that unrelated attorney-client communications appear in the same documents pertinent to the defense, those other communications may be redacted in the version produced to the Division. However, the redacted and unredacted versions of any such documents shall be provided to my office for *in camera* review, with the unredacted version highlighting the pertinent portions that were redacted.
3. Provide written notification to the counsel, whose documents and testimony are relevant to the defense, of Respondent's limited waiver of privilege with respect to the defense in this proceeding.

² At this stage, I do not reach whether an advice-of-counsel defense is cognizable in this proceeding.

³ *See In re EchoStar Commc'ns Corp.*, 448 F.3d 1294, 1299 (Fed. Cir. 2006); *Fort James Corp. v. Solo Cup Co.*, 412 F.3d 1340, 1349 (Fed. Cir. 2005); 1 Kenneth S. Broun et al., *McCormick on Evidence* § 93 (7th ed. 2013). I do not order Respondent to make such a limited waiver of attorney-client privilege at this stage, but, as a practical matter, if it chooses to proceed with the defense, it should proceed this way.

Any subpoena request by the parties for documents or witnesses related to any advice-of-counsel defense must be made by no later than December 22, 2016.

Jason S. Patil
Administrative Law Judge