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VIA EMAIL

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RE: HF No. 49, 2017/18 – Kristine Schmidt v. Regional Health Network, Inc., n/k/a
Monument Health

Greetings:

The Department of Labor & Regulation has reviewed Kristine Schmidt's (Schmidt) Motion to Amend Scheduling Order and Regional Health Network, Inc., n/k/a Monument Health's (Monument) Motion to Strike and all responsive briefs. Schmidt has moved to modify the scheduling order to extend the discovery deadline from October 22, 2021, to January 21, 2022 in order to allow time to depose her treating surgeon, Dr. Gaffney.

The South Dakota Supreme Court (Court) has established a four-part test to consider when extending deadlines or granting continuances. (1) Whether the delay resulting from the continuance will be prejudicial to the opposing party; (2) whether the continuance motion was motivated by procrastination, bad planning, dilatory tactics or

bad faith on the part of the moving party or his counsel; (3) the prejudice caused to the moving party by the trial court's refusal to grant the continuance; and (4) whether there have been any prior continuances or delays. *Meadowland Apartments v. Schumacher*, 813 N. W. 2d 618, 623 (SD 2012).

Applying the four-part test, the Department will first consider parts (1) and (3) together and address whether the delay resulting from the continuance will be prejudicial to either party. Monument asserts that extending the deadline and allowing for the deposition of Dr. Gaffney may result in the need to re-depose its expert, seek an additional independent medical examination (IME), or hold another deposition with Dr. Dietrich all of which would require the expenditure of additional time and resources.

Schmidt argues that both treating physician Dr. Dietrich and IME Dr. Carlson have already been deposed and provided their opinions. Further, Dr. Gaffney is expected to also give his causation opinions based on the same medical records the other doctors referenced. Schmidt also asserts that if Monument chooses to pursue additional deposition or examinations, such related expenses are a usual and standard cost of litigating a workers' compensation causation question and not great prejudice. However, Schmidt argues that she would endure great prejudice if she was unable to provide the opinion of her treating surgeon.

The Court has held, "[a party] is entitled as a matter of right to a reasonable opportunity to secure evidence on his behalf." *Tosh v. Schwab*, 743 N.W.2d 422, 430 (SD 2007). As it is her burden to prove that her injury remains a major contributing cause of her current condition and need for treatment which requires medical evidence,

the Department finds that the prejudice against Schmidt would be greater if she were unable to provide the opinion of Dr. Gaffney, her treating surgeon.

The Department will next consider part (2) whether the continuance motion was motivated by procrastination, bad planning, dilatory tactics or bad faith on the part of the moving party or his counsel and (4) whether there have been any prior continuances or delays. Schmidt argues that while Dr. Gaffney had been identified as a potential witness, he did not recommend surgery until July 2021. Then Schmidt did not decide to go through with the surgery until later, and Monument did not deny payment of the surgery until early November. Schmidt argues that these changes which occurred in Fall 2021, led her counsel to suggest to Monument that discovery deadlines should be pushed back to January of 2022 with a hearing in February of 2022. Monument refused to move the deadline and so Schmidt submitted this Motion to Extend.

Monument asserts that Schmidt alleged in her Petition for Hearing dated June 30, 2020 that she may require a future surgery. Schmidt also mentioned Dr. Gaffney's surgical referral to Dr. Dietrich in May of 2019. Therefore she was aware it was a possibility before July 2021. Monument argue that Schmidt has not explained why she did not elicit an updated opinion from Dr. Gaffney at that time.

Further, there have been two prior continuances in this matter, both at the request of Monument. The discovery deadline set by the Department's first scheduling order was moved by two and a half months by Monument's request and then again, an additional five and a half months. Schmidt points to the contrast between the requested extensions by Monument which amounted to eight months to her own request of three months, from October 22, 2021, to January 21, 2022.

Perhaps, Schmidt should have anticipated that she would pursue surgery with Dr. Gaffney, but the Department is not persuaded that her actions have risen to the level of procrastination, bad planning, dilatory tactics or bad faith. Further, the length of the extension that she has requested is not great. Applying parts (2) and (4), leads the Department to find in favor of Schmidt.

In summary, the Department finds that the prejudice Schmidt would endure if the extension were not granted is greater than that which would be incurred by Monument. Further, Schmidt's Motion is not motivated by bad planning or procrastination and the amount of time requested is not excessive or inappropriate.

Schmidt's Motion to Amend Scheduling Order is hereby GRANTED. Monument's Motion to Strike is DENIED.

As the deadline proposed by Schmidt, January 21, 2022, has passed the new discovery deadline shall be April 22, 2021. Further, the prehearing conference is scheduled for May 9, 2022 at 10:00 am CT.

Sincerely,



Michelle M. Faw
Administrative Law Judge

MMF/das