



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\_\_\_\_\_  
In the Matter of )  
 )  
THE NORTH CAROLINA [STATE] BOARD )  
OF DENTAL EXAMINERS, )  
 )  
Respondent. )  
\_\_\_\_\_

**PUBLIC**  
DOCKET NO. 9343

**RESPONDENT’S OPPOSITION TO COMPLAINT COUNSEL’S MOTION  
TO REPLACE WITNESS WITH EQUIVALENT REPRESENTATIVE  
FROM THE SAME COMPANY**

Pursuant to FTC Rule 3.22(d), Respondent, the North Carolina State Board of Dental Examiners (the “State Board” or “Respondent”), hereby submits this Opposition to Complaint Counsel’s Motion to Replace Witness with Equivalent Representative from the Same Company.

Complaint Counsel seeks to replace [REDACTED]

REDACTED

[REDACTED] Complaint Counsel first contacted Respondent’s Counsel with this request on January 31, 2011, nearly two months after filing its Final Witness List on December 7, 2010. (Respondent’s Counsel also notes that although Complaint Counsel initially requested substitution for two of its witnesses during this initial contact on January 31st, Complaint Counsel’s motion only requests replacement of one of those witnesses.)

Complaint Counsel’s Final Proposed Witness List includes other witnesses in the same industry as [REDACTED]

REDACTED

[REDACTED]

[REDACTED]

REDACTED

[REDACTED]

[REDACTED] Complaint

Counsel states in its Final Proposed Witness List that these witnesses are expected to testify about the same general subjects as [REDACTED]

REDACTED

[REDACTED]

[REDACTED] Respondent maintains that Complaint Counsel should have sufficient testimony from these five other witnesses to prove their case without an additional witness at this late stage of the proceedings. Therefore, Complaint Counsel has failed to demonstrate good cause for substituting one of its witnesses.

As indicated in the email exchange between Complaint Counsel and Counsel for Respondent attached hereto as Exhibit A, Respondent has no objection to the replacement

REDACTED of [REDACTED] provided that Respondent's Counsel is given an

opportunity to depose [REDACTED] prior to his testimony at the evidentiary hearing.

Complaint Counsel declined to agree to this condition. Respondent will be prejudiced by the substitution if not allowed to depose [REDACTED] before his testimony occurs. REDACTED

WHEREFORE, for the reasons stated above, Respondent requests that the Administrative Law Judge deny Complaint Counsel's Motion to Replace Witness with Equivalent Representative from the Same Company.

This the 15th day of February, 2011.

ALLEN AND PINNIX, P.A.

/s/ Alfred P. Carlton, Jr.

By: \_\_\_\_\_

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## CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2011, I electronically filed the foregoing with the Federal Trade Commission using the FTC E-file system, which will send notification of such filing to the following:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Room H-113  
Washington, D.C. 20580

I hereby certify that the undersigned has this date served copies of the foregoing upon all parties to this cause by electronic mail as follows:

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I also certify that I have sent courtesy copies of the document via Federal Express and electronic mail to:

The Honorable D. Michael Chappell  
Administrative Law Judge  
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Washington, D.C. 20580  
[oyalj@ftc.gov](mailto:oyalj@ftc.gov)

This the 15th day of February, 2011.

/s/ Alfred P. Carlton, Jr.

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Alfred P. Carlton, Jr.

#### **CERTIFICATION FOR ELECTRONIC FILING**

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and by the adjudicator.

/s/ Alfred P. Carlton, Jr.

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Alfred P. Carlton, Jr.



**EXHIBIT A**

{in camera}

REDACTED