

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



_____)	
In the Matter of)	PUBLIC
THE NORTH CAROLINA [STATE] BOARD)	
OF DENTAL EXAMINERS,)	DOCKET NO. 9343
Respondent.)	
_____)	

**RESPONDENT’S MOTION FOR LEAVE TO SUBMIT SURREBUTTAL
EXPERT WITNESS REPORT AND TO STRIKE (IN PART) EXPERT
WITNESS REBUTTAL REPORT OF MARTIN GINGER, D.M.D.**

NOW COMES Respondent, by and through the undersigned attorneys, pursuant to Rule 3.31A(a) of the FTC Rules of Practice for Adjudicative Proceedings, and respectfully moves the Administrative Law Judge for an Order granting leave to submit a surrebuttal expert witness report and to strike (in part) the Expert Witness Rebuttal Report of Martin Giniger, D.M.D., in the above-captioned matter. In support of this motion, Respondent shows the following:

1. The Expert Witness Report of Dr. Martin Giniger was provided to Respondent by Complaint Counsel on November 26, 2010.
2. Respondent provided the Expert Witness Report of Dr. Van Haywood to Complaint Counsel on December 20, 2010.
3. Dr. Giniger’s Rebuttal Report was provided to Respondent on January 8, 2011.

4. Respondent seeks leave to submit a surrebuttal expert witness report by Dr. Van Haywood to address the following material information presented by Dr. Giniger's Rebuttal Report, all of which is outside the scope of fair rebuttal:

- page 7 – first two full paragraphs and last partial paragraph
- page 8 – first partial paragraph
- page 10 – last paragraph
- page 11 – entire page
- page 12 – entire page
- page 13 – first partial paragraph
- page 17 – last full paragraph and last partial paragraph
- page 18 – first partial and first full paragraphs under heading B
- page 21 -- last partial paragraph
- page 22 – entire page

5. Respondent respectfully requests that the deadline for submitting a surrebuttal expert witness report by Dr. Van B. Haywood be set for January 21, 2011.

6. Respondent further moves to strike the following matters and information presented in Dr. Giniger's Rebuttal Report, all of which do not rebut matters set forth in Dr. Haywood's Expert Report:

- page 1 – entire first paragraph
- page 4 – second full paragraph
- page 5 – first paragraph under heading III
- page 23 – entire page
- page 24 – first partial paragraph

7. Counsel for Respondent has conferred with Complaint Counsel about this Motion for Leave and to Strike (in part), and Complaint Counsel have indicated that they will oppose this motion.

WHEREFORE, Respondent respectfully requests that the Administrative Law Judge:

1. Grant leave to file a surrebuttal expert witness report by Dr. Van Haywood; and
2. Strike (in part) the expert witness rebuttal report of Dr. Martin Giniger as requested above; and
3. For such other and further relief as deemed just and proper.

This the 13th day of January, 2011.

ALLEN AND PINNIX, P.A.

/s/ Alfred P. Carlton, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 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-159
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
Federal Trade Commission
600 Pennsylvania Avenue N.W.
Room H-113
Washington, D.C. 20580
oyalj@ftc.gov

This the 13th day of January, 2011.

/s/ Alfred P. Carlton, Jr.
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.
Alfred P. Carlton, Jr.

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

In the Matter of)	
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)	
THE NORTH CAROLINA [STATE] BOARD)	DOCKET NO. 9343
OF DENTAL EXAMINERS,)	
)	
Respondent.)	
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**[PROPOSED] ORDER ON RESPONDENT’S MOTION FOR LEAVE TO
SUBMIT SURREBUTTAL EXPERT WITNESS REPORT AND TO STRIKE
(IN PART) EXPERT WITNESS REBUTTAL REPORT OF
MARTIN GINIGER, D.M.D.**

This matter comes before the undersigned on Respondent’s Motion for Leave to Submit Surrebuttal Expert Witness Report and to Strike (in Part) Expert Witness Rebuttal Report of Martin Giniger, D.M.D. Having considered the motion, it is hereby

ORDERED, that the Motion for Leave to Submit Surrebuttal Expert Witness Report is Granted, and Respondent has a deadline of January 21, 2011 to provide the Surrebuttal Expert Witness Report of Van B. Haywood, D.M.D. to Complaint Counsel.

IT IS FURTHER ORDERED, that Respondent’s Motion to Strike (in Part) the Expert Witness Rebuttal Report of Martin Giniger, D.M.D. is Granted. The matters in Dr. Giniger’s Rebuttal Report that shall be struck are as follows:

_____.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: January __, 2011