

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



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

**RESPONDENT’S MOTION TO STRIKE (IN PART)
REBUTTAL REPORT OF PROFESSOR JOHN KWOKA**

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 striking (in part) the Rebuttal Report of Professor John Kwoka in the above-captioned matter. In support of this motion, Respondent shows the following:

1. The Expert Witness Report of Professor John Kwoka was provided to Respondent by Complaint Counsel on November 26, 2010.
2. Respondent provided the Expert Witness Report of Dr. David Baumer to Complaint Counsel on December 20, 2010.
3. Professor Kwoka’s Rebuttal Report was provided to Respondent on January 8, 2011.
4. Respondent moves to strike the following matters and information presented in Professor Kwoka’s Rebuttal Report, all of which do not rebut matters set forth in Dr. Baumer’s Expert Report:

- page 1 – all paragraphs under heading I
- page 2 – paragraphs 1 – 3 under heading II
- page 3 – paragraph 2
- page 5 – paragraphs 1 and 2 under heading III
- page 7 – last sentence of paragraph 4
- page 8 – first paragraph

5. Counsel for Respondent has conferred with Complaint Counsel about this Motion 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. Strike (in part) the expert witness rebuttal report of Professor John Kwoka as requested above; and
2. 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.
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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.

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**[PROPOSED] ORDER ON RESPONDENT’S MOTION TO STRIKE
(IN PART) REBUTTAL REPORT OF PROFESSOR JOHN KWOKA**

This matter comes before the undersigned on Respondent’s Motion to Strike (in Part) Expert Witness Rebuttal Report of Professor John Kwoka. Having considered the motion, it is hereby

ORDERED, that Respondent’s Motion to Strike (in Part) the Expert Witness Rebuttal Report of Professor John Kwoka is Granted. The matters in Professor Kwoka’s Rebuttal Report that shall be struck are as follows: _____

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: January __, 2011