FEDERAL TRADE COMMISSION
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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	**PUBLIC**
THE NORTH CAROLINA BOARD OF DENTAL EXAMINERS,	)	Docket No. 9343
Respondent.	)	

COMPLAINT COUNSEL'S PROPOSED FINAL STIPULATIONS OF LAW, FACT, AND AUTHENTICITY

In accordance with the Scheduling Order in this proceeding, Complaint Counsel herein provides it's Proposed Final Stipulations of Law, Fact and Authenticity. Complaint Counsel notes that the parties have not agreed to any stipulations of law, fact or authenticity at this time. Complaint Counsel reserves the right to offer any stipulations of law, fact and authenticity subsequently agreed to by the parties as provided for in the Scheduling Order.

Complaint Counsel reserves the right to propose additional and alternative stipulations of law, fact, and authenticity as circumstances warrant.

I. Proposed Stipulations of Fact.

1. The North Carolina State Board of Dental Examiners ("Board") has its principal place of business at 507 Airport Blvd., Ste. 105, Morrisville, NC 27560.

2. The Board is organized, exists and transacts business under and by virtue of the laws of the state of North Carolina.

3. North Carolina General Statute Ch. 90 Art. 2 (N.C. Gen. Stat. § 90-22 *et. seq.*) ("Dental Act") governs the practice of dentistry in North Carolina.

4. The Board consists of six licensed dentists, one licensed dental hygienist, and one consumer member, who is neither a dentist nor a dental hygienist.

5. Each dentist member is elected to the Board by the licensed dentists of North Carolina.

6. The dental hygienist member is elected to the Board by the licensed dental hygienists of North Carolina.

7. The Governor appoints the consumer member.

8. Each member serves a three-year term. No member may serve more than two consecutive terms.

9. An election is "contested" when there are more candidates running for election than there are available Board positions.

10. If an election is contested, candidates may distribute letters and make speeches that discuss the reasons they want to serve on the Board, including their positions on issues that may come before the Board.

11. Pursuant to the Dental Act, each dentist elected to the Board must be licensed and actively engaged in the practice of dentistry while serving on the Board.

12. Members of the Board must file financial disclosure statements with the North Carolina State Ethics Commission.

13. The Ethics Commission does not require members of the Board to itemize the income they derive by the various professional services they perform.

14. To the extent that members of the Board are not required pursuant to statute or regulation to disclose the itemized income information, they have not done so.

15. The Ethics Commission regulates the Board solely as it pertains to compliance with the Ethics Act and Lobbying Law.

16. The Board is the sole licensing authority for dentists in North Carolina.

17. It is unlawful for an individual to practice dentistry in North Carolina without holding a current license to practice issued by the Board.

18. It is unlawful for an individual to practice as a dental hygienist in North Carolina without holding a current license to practice issued by the Board.

19. The Board has authority under the Dental Act to take disciplinary actions against dentists practicing in North Carolina for violations of the Dental Act.

20. The Board has authority under the Dental Act to take disciplinary actions against dental hygienists practicing in North Carolina for violations of the Dental Act.

21. Only dentist Board members are involved in enforcement action with respect to the unauthorized practice of dentistry and with respect to Board disciplinary actions involving dentists. The non-dentist members of the Board do not

participate in the Board's disciplinary actions involving dentists. The consumer member of the Board does not participate in the Board's disciplinary actions involving dentists or hygienists.

22. The Dental Act does not require that an injury be suffered before the Board will consider a complaint.

23. All enforcement actions relating to the unauthorized practice of dentistry are addressed by the Board in closed session.

24. No dentist Board member has ever recused himself from a case involving the provision of teeth whitening services.

25. Neither the Governor's office nor the Attorney General's office is involved in individual actions relating to the Board actions concerning non-dentist teeth whitening.

26. The Board's fiscal year runs from August 1st through July 31st of the following year.

27. Stanley L. Allen, D.D.S. is a dentist practicing in North Carolina. Dr. Allen served on the Board during its fiscal years starting in 2004, 2005, and 2006. He served as Secretary-Treasurer for the fiscal year starting in 2004, President for the fiscal year starting in 2005, and Immediate Past President for the fiscal year starting in 2006.

28. Benjamin W. Brown, D.D.S. is a dentist practicing in North Carolina. Dr. Brown served on the Board during its fiscal years starting in 2004 and 2005. He served as President for the fiscal year starting in 2004, and Immediate Past President for the fiscal year starting in 2005.

29. Joseph S. Burnham, D.D.S. is a dentist practicing in North Carolina. Dr. Burnham served on the Board during its fiscal years starting in 2004, 2005, 2006, 2007, and 2008. He served as Secretary-Treasurer for the fiscal year starting in 2005, President for the fiscal year starting in 2006, and Immediate Past President for the fiscal year starting in 2007.

30. Zannie Poplin Efird served as Consumer Member of the Board during its fiscal years starting in 2004, 2005, 2006, 2007, and 2008.

31. Clifford O. Feingold, D.D.S. is a dentist practicing in North Carolina. Dr. Feingold served on the Board during its fiscal years starting in 2005, 2006, and 2007.

32. Neplus H. Hall, R.D.H. is a registered dental hygienist in practicing in North Carolina. Ms. Hall served as the Dental Hygienist member of the Board during its fiscal years starting in 2004, 2005, 2006, and 2007.

33. W. Stan Hardesty, D.D.S. is a dentist practicing in North Carolina. Dr. Hardesty served on the Board during its fiscal years starting in 2004, 2005, 2006, 2007, 2008, and 2009. He served as Secretary-Treasurer for the fiscal year starting in 2006, President for the fiscal year starting in 2007, and Immediate Past President for the fiscal year 2008.

34. James B. Hemby, Jr. served as Consumer Member of the Board during its fiscal years starting in 2009 and 2010.

35. C. Wayne Holland, D.D.S. is a dentist practicing in North Carolina. Dr. Holland served on the Board during its fiscal years starting in 2004, 2006, 2007, 2008, 2009, and 2010. He served as Secretary-Treasurer for the fiscal year starting in 2009, President for the fiscal year starting in 2009, and Immediate Past President for the fiscal years starting in 2004 and 2010.

36. David A. Howdy, D.D.S. is a dentist practicing in North Carolina. Dr. Howdy served on the Board during its fiscal year starting in 2010.

37. Brad C. Morgan D.D.S. is a dentist practicing in North Carolina. Dr. Morgan served on the Board during its fiscal years starting in 2004, 2007, 2008, 2009, and 2010. He served as Secretary-Treasurer for the fiscal year starting in 2009.

38. Ronald K. Owens, D.D.S. is a dentist practicing in North Carolina. Dr. Owens served on the Board during its fiscal years starting in 2005, 2006, 2007, 2008, 2009, and 2010. He served as Secretary-Treasurer for the fiscal year starting in 2007, President for the fiscal years starting in 2008 and 2010, and Immediate Past President for the fiscal year starting in 2009.

39. Kenneth M. Sadler, D.D.S. is a dentist practicing in North Carolina. Dr. Sadler served on the Board during its fiscal years starting in 2009 and 2010.

40. Jennifer A. Sheppard, R.D.H. is a registered dental hygienist in practicing in North Carolina. Ms. Sheppard served as the Dental Hygienist member of the Board during the fiscal years starting in 2008, 2009, and 2010.

41. Millard W. Wester, D.D.S. is a dentist practicing in North Carolina. Dr. Wester served on the Board during its fiscal years starting in 2008, 2009, and 2010. He served as Secretary-Treasurer for the fiscal year starting in 2010.

42. For the fiscal year starting in 2004 the Board consisted of Benjamin W. Brown (President), C. Wayne Holland (Immediate Past President), Stanley L. Allen

(Secretary-Treasurer), Neplus H. Hall (Dental Hygienist Member), Zannie Poplin Efird (Consumer Member), Joseph S. Burnham, W. Stan Hardesty, and Brad C. Morgan.

43. For the fiscal year starting in 2005 the Board consisted of Stanley L. Allen (President), Benjamin W. Brown (Immediate Past President), Joseph S. Burnham, (Secretary-Treasurer), Neplus H. Hall (Dental Hygienist Member), Zannie Poplin Efird (Consumer Member), Clifford O. Feingold, W. Stan Hardesty, and Ronald K. Owens.

44. For the fiscal year starting in 2006 the Board consisted of Joseph S. Burnham (President), Stanley L. Allen (Immediate Past President), W. Stan Hardesty (Secretary-Treasurer), Neplus H. Hall (Dental Hygienist Member), Zannie Poplin Efird (Consumer Member), Clifford O. Feingold, C. Wayne Holland, and Ronald K. Owens.

45. For the fiscal year starting in 2007 the Board consisted of W. Stan Hardesty (President), Joseph S. Burnham (Immediate Past President), Ronald K. Owens (Secretary-Treasurer), Jennifer A. Sheppard (Dental Hygienist Member), Zannie Poplin Efird (Consumer Member), Clifford O. Feingold, C. Wayne Holland, and Brad C. Morgan.

46. For the fiscal year starting in 2008 the Board consisted of Ronald K. Owens (President), W. Stan Hardesty (Immediate Past President), C. Wayne Holland (Secretary-Treasurer), Neplus H. Hall (Dental Hygienist Member), Zannie Poplin Efird (Consumer Member), Joseph S. Burnham, Brad C. Morgan, and Millard W. Wester.

47. For the fiscal year starting in 2009 the Board consisted of C. Wayne Holland (President), Ronald K. Owens (Immediate Past President), Brad C. Morgan (Secretary-Treasurer), Jennifer A. Sheppard (Dental Hygienist Member), James B. Hemby, Jr. (Consumer Member), W. Stan Hardesty, Kenneth M. Sadler, and Millard W. Wester.

48. For the fiscal year starting in 2010 the Board consisted of Ronald K. Owens (President), C. Wayne Holland (Immediate Past President), Millard W. Wester (Secretary-Treasurer), Jennifer A. Sheppard (Dental Hygienist Member), James B. Hemby, Jr. (Consumer Member), David A. Howdy, Brad C. Morgan, and Kenneth M. Sadler.

49. The dentist Board members direct the Board staff and investigative panels in matters relating to teeth whitening services performed by non-dentists.

50. The non-dentist Board members do not participate in investigations relating to teeth whitening services performed by non-dentists.

51. Some dentist Board members provide teeth whitening services to patients. These Board members derive income from the provision of teeth whitening services.

52. The Board files audited financial statements with the Secretary of State. The statements contain an auditor's report, balance sheet, cash flow statement and notes about key changes to the Board's fixed assets.

53. The Board files an annual report to the Governor, Secretary of State, Attorney General, and Joint Legislative Administrative Oversight Committee.

54. The Board has not filed or provided any information with the Governor, Secretary of State, Attorney General, or Joint Legislative Administrative Oversight Committee about teeth whitening services provided by non-dentists.

55. Zoom and Bright Smile are in-office teeth whitening products made by Discus.

56. Discus Dental sells and/or has sold teeth whitening products in North Carolina. Discus Dental is headquartered in Culver City, CA.

57. Dentsply sells and/or has sold teeth whitening products in North Carolina. Dentsply is headquartered in York, PA.

58. Bleach Bright sells and/or has sold teeth whitening products in North Carolina. Bleach Bright is headquartered in Kenner, LA.

59. Ultradent sells and/or has sold teeth whitening products in North Carolina. Ultradent is headquartered in South Jordan, UT.

60. Luma Lite, Inc. sells and/or has sold teeth whitening products in North Carolina. Luma Lite is headquartered in Spring Valley, CA.

61. BEKS sells and/or has sold teeth whitening products in North Carolina. BEKS is headquartered in Jasper, AL.

62. Grater Whiter Smiles sells and/or has sold teeth whitening products in North Carolina. Grater Whiter Smiles is headquartered in Fond du Lac, WI.

63. White Science sells and/or has sold teeth whitening products in North Carolina. White Science is headquartered in Alpharetta, GA.

64. Hydrogen peroxide and carbamide peroxide are the primary whitening agents used for teeth whitening.

65. In a water based solution, carbamide peroxide breaks down into hydrogen peroxide and urea during the teeth whitening process.

66. Carbamide peroxide is approximately one third of the strength of hydrogen peroxide.

67. Hydrogen and carbamide peroxide have been used as mouth rinses to reduce plaque in individuals with gingivitis and for the treatment of periodontal disease. The strength of the hydrogen peroxide used for the treatment of periodontal disease is approximately 2%.

68. Teeth whitening products used by dentists for in-office teeth whitening generally have a higher concentration of the active ingredients hydrogen peroxide or carbamide peroxide than that typically used in non-dentist teeth whitening.

69. Non-dentist teeth whitening operations use hydrogen peroxide at concentration levels that are available without a prescription.

70. Teeth whitening services are offered by dentists and non-dentists in North Carolina.

71. According to a 2008 Gallup Poll, over 80% of dentists engage in teeth whitening.

72. Dentists in North Carolina have had revenues tens of thousands of dollars in one year from teeth whitening.

73. Many dentists offer both in-office teeth whitening services and take-home teeth whitening kits.

74. Take home kits provided by dentists include a custom-made whitening tray and whitening gel. The consumer applies the whitening gel.

75. Take home kits provided by dentists can either be used as a follow-up to in-office treatment or as the sole teeth whitening service.

76. When used by themselves, take home kits provided by dentists can take several days to noticeably whiten teeth, and require the consumer to reapply the whitening solution multiple times to the teeth.

77. Take home kits provided by dentists usually require at least two visits to the dentist. Typically, in the first visit, the dentist examines the patient and takes an impression used to make a customized teeth whitening tray. Typically, in the second visit, the dentist delivers the tray and whitening solution, and provides instructions for whitening to the patient.

78. Non-dentist providers of teeth whitening services have advertised that they can whiten teeth in less than one hour.

79. Non-dentist providers of teeth whitening services have advertised that they charge lower prices for their services than dentists charge for their teeth whitening services.

80. Non-dentist providers of teeth whitening services have compared their services to teeth whitening provided by dentists with respect to efficacy and price.

81. Non-dentists sell products under many different brand names including White Smile USA, Brite White, Beyond White Spa, Beyond Dental & Health, and SpaWhite.

82. Available over-the-counter teeth whitening products include gels, rinses, chewing gums, tray based systems, and strips.

83. Over-the-counter teeth whitening products may take several days to several weeks to noticeably whiten teeth, and require the consumer to use product on a daily basis.

84. Over-the-counter strips and trays typically cost between $15 and $75, depending on brand, quantity, and concentration.

85. The Board has found, through its investigations, that licensed dentists have engaged in unsanitary practices.

86. The Board has found, through its investigations, that some licensed dentists have caused non-transitory harm to patients during treatment.

87. The Board has identified at least one example of a North Carolina dentist causing non-transitory harm to a patient while performing a teeth-whitening procedure.

88. The Board is not aware of any study showing that dental teeth whitening is safer than teeth whitening provided at a mall or salon.

89. The Board is not aware of any empirical data or studies showing that provision of teeth-whitening services by non-dentists is more likely to lead to patient health issues than that provided by dentists.

90. The Board is not aware of any empirical data or studies showing that provision of teeth-whitening services by non-dentists is more likely to lead to public safety issues than that provided by dentists.

91. The Board is not aware of any consumer harm due to any of the non-dentist teeth whitening procedures referenced in paragraph 18 of its Response.

92. The Board is not aware of any complaint by a consumer of non-dentist teeth whitening services that he or she believed that the services were being provided by a dentist.

93. In or around 2004, the Board began receiving complaints from its constituents about non-dentists providing teeth whitening services.

94. The Board Secretary determines which dentist Board member will handle a complaint that involves non-dentist teeth whitening.

95. That dentist member is referred to as the Case Officer.

96. The Case Officer is authorized by the Board to make enforcement decisions and take enforcement actions on its behalf.

97. Dentist Board members have concluded that the provision of teeth whitening services by non-dentists constitutes the unauthorized practice of dentistry.

98. The Board will not permit practicing dental hygienists licensed in North Carolina to engage in teeth whitening without the direct supervision of a dentist.

99. Pursuant to N.C.G.S. §90-40.1, violations of the Dental Act can only be enjoined by the Attorney General, a district attorney, the Board in its own name, or a citizen of North Carolina, filing a law suit in North Carolina.

100. The Board does not have the statutory authority to independently issue or enforce an order to any person or entity to cease or desist violating any provision of the Dental Act.

101. There have been no decisions on the merits in a North Carolina court relating to the Dental Board's enforcement of the Dental Practices Act with respect to non-dental teeth whitening.

102. The Board issued at least 47 such cease and desist orders to non-dentist providers of teeth whitening services.

103. On at least six occasions, the Board communicated with non-dentists considering opening teeth whitening businesses that teeth whitening services could only be legally provided by dentists.

104. The Board has sent at least 11 letters to third parties, including out-of-state property management companies, indicating that teeth whitening services provided at mall kiosks by non-dentists are illegal in North Carolina.

105. The Board's Cease and Desist Orders were effective and many of the recipients ceased offering teeth-whitening services.

106. The Board has opened only three investigations based on complaints of actual consumer harm.

107. The Board has not discussed in any public Board meeting the issue of whether to send a cease and desist order or letter to a non-dentist providing teeth-whitening services.

108. The Board did not believe that commercial property owners would be violating the law by leasing space to non-dentist teeth whiteners.

109. The Board communicated to out-of-state manufactures and distributors of teeth whitening products and equipment that the provision of teeth whitening services is illegal in North Carolina.

110. The Board provided the North Carolina Board of Cosmetic Arts Examiners about the subject of non-dentist teeth whitening services with a notice in February 2007 that stated:

> Cosmetologists should be aware that any device or process that "removes stains, accretions or deposits from the human teeth" constitutes the practice of dentistry as defined by North Carolina General Statutes 90-29(b)(2). Taking impressions for bleaching trays also constitutes the practice of dentistry as defined by North Carolina General Statutes 90-29(b)(7).
>
> Only a licensed dentist or dental hygienist acting under the supervision of a licensed dentist may provide these services. The unlicensed practice of dentistry in our state is a misdemeanor.

111. The Dental Act provides anyone accused of the unlawful practice of dentistry with due process and access to an unbiased court.

112. The Board formally adopted an interpretive statement regarding its definition of the unauthorized practice of dentistry on January 9, 2010.

113. The Board never adopted a rule to clarify the meaning of the practice of dentistry with respect to teeth whitening under the Dental Act.

II. Proposed Stipulations of Law.

1. The North Carolina State Board of Dental Examiners (the "Board") is created by the Dental Act. N.C. Gen. Stat. § 90-22.

2. The Board is comprised of six persons licensed to practice dentistry in North Carolina, one person licensed to practice dental hygiene in North Carolina, and one consumer member. N.C. Gen. Stat. § 90-22(b).

3. The dentist members of the Board are elected by vote of persons licensed to practice dentistry in North Carolina. N.C. Gen. Stat. § 90-22(b).

4. The Dental Practices Act authorizes the Board to address suspected instances of the unlicensed practice of dentistry in either of two ways: the Board may petition a state court for an injunction, or it may request that the district attorney initiate a criminal prosecution. The Dental Practices Act does not provide the Board with the authority, on its own, to order a suspected or alleged violator to cease and desist from the unlicensed practice of dentistry. N.C. Gen. Stat. § 90-40.1.

5. North Carolina law establishes no mechanism for any person or entity to review a Board decision to issue a cease and desist order to a non-dentist before the order is issued.

6. North Carolina law establishes no mechanism for any person or entity to review a Board decision to take any other action, other than described in paragraph 2 hereof, to interfere with, limit, or exclude from the marketplace any person suspected or alleged to be engaged in the unlicensed practice of dentistry.

7. The Board is a state agency, and therefore a "person" within the meaning of the FTC Act. *In re Mass. Bd. of Registration in Optometry*, 110 F.T.C. 549, 608-09 (F.T.C. 1988); *City of Lafayette v. La. Power & Light Co.*, 435 U.S. 389, 394-97 (1978).

8. Section 5 of the FTC Act prohibits unfair methods of competition in or affecting commerce. 15 U.S.C. § 45(a)(1).

9. The Board's acts and practices are in or affect commerce as defined in the FTC Act.

10. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the Board.

11. The elements of a Sherman Act § 1 claim are: (1) a combination or conspiracy that (2) unreasonably restrains trade. *Valuepest.com v. Charlotte, Inc.*, 561 F.3d

282, 286 (4th Cir. 2009); *Fashion Originators' Guild, Inc. v. FTC, 312* U.S. 457, 463-64 (1941).

12. The Board is a combination of competitors, and its conduct constitutes concerted action within the meaning of the antitrust laws. *Am. Needle, Inc. v. NFL*, 130 S. Ct. 2201, 2209-2210 (2010); *In re Mass. Bd. of Registration in Optometry*, 110 F.T.C. 549, 610-11 (F.T.C. 1988).

13. The Board has the power to exclude competition. *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 391 (1956).

14. An agreement among competitors to exclude from the market a service that consumers would prefer is inherently likely to harm competition, and requires justification. *Radiant Burners, Inc. v. Peoples Gas Light & Coke Co.*, 364 U.S. 656, 658-60 (1991); *In re Realcomp II, Ltd.*, No. 9320, 2009 FTC LEXIS 250, at *72 (Oct. 30, 2009) (Commission Opinion).

15. The argument that anticompetitive restraints are permissible if they prevent consumers from making unwise choices is not a cognizable efficiency or antitrust defense. *FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 462-64 (1986); *National Soc'y of Prof'l Eng's v. United States*, 435 U.S. 679, 695 (1978).

16. If legitimate safety concerns are cognizable, the ban on non-dentist teeth whitening is nonetheless overly broad.

17. The state action doctrine limits the reach of the federal antitrust laws in recognition of the fact that Congress, in enacting those laws, did not intend to supercede actions by the state sovereigns that may injure competition. *Parker v. Brown*, 317 U.S. 341, 362 (1942).

18. Because the state action doctrine provides an exemption from the antitrust laws, it is disfavored. *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992). Like other exceptions to the antitrust laws, the state action defense must be narrowly construed. *City of Lafayette v. La. Power & Light Co.*, 435 U.S. 389, 398 (1978).

19. Supreme Court cases provide for three distinct modes of state action review, depending upon whether the decision-maker is the state acting in its sovereign capacity, a public actor, or a private actor.

20. The Supreme Court distinguishes between public actors and private actors based upon the decision-making incentives of the actor. *Town of Hallie v. City of Eau Claire*, 471 U.S. 34 (1985).

21. When a state board or its constituents have a financial interest in the market that is being restrained, the state board is considered to be a private actor. *Goldfarb v.*

Virginia State Bar, 421 U.S. 773, 791 (1975); *Cont'l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 706 (1962).

22. Anticompetitive conduct by a private party is exempt from the antitrust laws under the state action doctrine only if both prongs of the Midcal test are satisfied. *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980).

23. Accordingly, the anticompetitive concerted action of private persons is exempt from antitrust law violation only insofar as its conduct was forseeably within the state sovereign's clearly articulated intention to displace competition with regulation, and it is subject to active supervision attributable to the state sovereign. *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980).

24. Active supervision requires that state officials both have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy. *Patrick v. Burget*, 486 U.S. 94, 101 (1988).

25. The Board has not satisfied its burden on either prong. Accordingly, the state action exemption is unavailable to the Board as a matter of law.

26. Through its conduct, the Board has unreasonably restrained trade and violated Section 5 of the FTC Act.

III. Proposed Stipulations of Authenticity.

1. Each document on Complaint Counsel's exhibit list (CX0001- 0669) is authentic, genuine, and a true and correct copy of what it purports to be.

Respectfully submitted,

s/ Richard B. Dagen
Richard B. Dagen
Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, DC 20580
Phone: (202) 326-2628
Facsimile: (202) 326-3496

Dated: February 8, 2011

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2011, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Noel Allen
Allen & Pinnix, P.A.
333 Fayetteville Street
Suite 1200
Raleigh, NC 27602
nla@Allen-Pinnix.com

Counsel for Respondent
North Carolina State Board of Dental Examiners

CERTIFICATE FOR ELECTRONIC FILING

I 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 the adjudicator.

February 8, 2011 By: s/ Richard B. Dagen
Richard B. Dagen