

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,)	
)	EXPEDITED
Respondent.)	TREATMENT
)	REQUESTED

**MOTION FOR *IN CAMERA*/PROTECTED TREATMENT
OF RESPONDENT'S CONFIDENTIAL INFORMATION IN THE RECORD
AND COMPLAINT COUNSEL'S POST-TRIAL FILINGS**

Pursuant to FTC Rule 3.22(a), Respondent, the North Carolina State Board of Dental Examiners (the "State Board" or "Respondent"), hereby moves the Administrative Law Judge ("ALJ") to allow *in camera*/protected treatment of Respondent's Confidential Materials (described in the Schedule attached hereto as Exhibit 1) in the record and in Complaint Counsel's Post-Trial Filings in accordance with Rule 3.45(e). This Motion is filed pursuant to the ALJ's recent Order Granting Respondent's Motion for Leave to File a Motion for *In Camera* Treatment (the "Order") and in connection with Respondent's discussions with Complaint Counsel regarding how Respondent never received 3.45(b) notice regarding Complaint Counsel's intent to use material designated as confidential by Respondent (the "Confidential Materials") at the hearing and in its Post-Trial Filings.

In support of this Motion, Respondent states as follows:

1. As explained in Respondent's Motion for Leave to File for *In Camera*/Protected Treatment of Respondent's Confidential Information in the Record and Complaint Counsel's Post-Trial Filings (the "Motion for Leave to File"), Respondent

has attempted in good faith to comply with the FTC's Rules and the ALJ's Protective Order Governing Discovery Material ("Protective Order", attached hereto as Exhibit 2) by addressing the use and disclosure of confidential information; and by designating as confidential numerous documents provided to Complaint Counsel during discovery. After conducting a diligent and thorough search of Respondent's files and several conferences with Complaint Counsel between the dates of May 23 and June 6, 2011, it became apparent that Respondent had not received notice pursuant to Rule 3.45(b) that would allow for it to move for *in camera* treatment of its Confidential Materials. After this lack of 3.45(b) notice came to light, the ALJ issued his Order allowing for Respondent to file for *in camera* treatment.

2. Respondent also notes that the FTC Rules do not require Respondent to meet the specific showing under Rule 3.45(b) regarding "[i]n camera treatment of material" in order for Complaint Counsel to be required to redact such information from its Proposed Findings, because Rule 3.45 makes a clear distinction between information that is to be accorded *in camera* treatment and information that is "subject to confidentiality protections pursuant to a protective order." Rule 3.45(d), entitled "*Briefs and other submissions referring to in camera or confidential information*", provides:

Parties shall not disclose information that has been granted *in camera* status pursuant to §3.45(b) **or is subject to confidentiality protections pursuant to a protective order** in the public version of **proposed findings, briefs, or other documents**.

(emphasis added). Rule 3.45(e) notes the same distinction in both its heading and in the body of its text, which provides the specific procedure for filing both a public and non-public version of "briefs and other submissions" that "include[] specific information that has been granted *in camera* status pursuant to §3.45(b) or is subject to confidentiality

protections pursuant to a protective order.” (emphasis added). This distinction appears six times in Rule 3.45.

3. Respondent respectfully requests that certain documents designated as confidential by Respondent in accordance with the Protective Order and pursuant to North Carolina law be accorded confidential treatment and that Complaint Counsel be required to redact information designated by Respondent as confidential from Complaint Counsel’s Post-Trial Filings (including Complaint Counsel’s Post-Trial Brief, Proposed Findings of Fact, and responses to Respondent’s Proposed Findings of Fact) in accordance with Rule 3.45(e).¹

4. Respondent also seeks leave to re-file its own Response to Complaint Counsel’s Proposed Findings of Fact² in order to allow Respondent to properly redact any Confidential Material that was provided therein out of necessity and based on the post-trial briefing schedule once the ALJ has ruled on its protected status.

5. Further, Respondent notes that upon its review of the hearing record, use was made of some of Respondent’s Confidential Materials and a number of references were made to these Materials. Respondent respectfully requests that these Materials be accorded *in camera*/protected treatment and that the individual page and line numbers

¹ Complaint Counsel’s response to Respondent’s original Opposition made much of the fact that Respondent filed its Replies to Complaint Counsel’s Proposed Findings of Fact as a public document with the confidential materials intact. Respondent notes that, although such Replies were made as a public filing, Complaint Counsel neglected to mention that Respondent specifically stated on page four that its Replies were filed in order to meet the deadline imposed by Judge Chappell’s Order granting Respondent’s Second Motion for Extension of Time and in reliance upon the Secretary’s notification of May 2, 2011 that no other filings by either party would be posted on the Commission’s website until further notice. On the same page of its Replies, Respondent maintained its objection “as to the confidential nature of certain proposed findings of fact contained in [the] Replies to Complaint Counsel’s Proposed Findings of Fact.”

² Respondent also seeks to correct a few of its exhibit references in its Replies to Complaint Counsel’s Proposed Finding of Fact numbers 283, 361, and 1178 as noted in Table 3 of Exhibit 1 attached hereto.

that Respondent has identified where Confidential Materials are discussed in the hearing record be redacted from the public version of the hearing transcript.

6. A schedule detailing the specific Confidential Materials for which Respondent now seeks protected treatment according to Rule 3.45 is attached hereto as Exhibit 1. Also attached hereto as Exhibit 3 is the Declaration of Bobby D. White, who is the Chief Operating Officer of the State Board and who has personal knowledge to support the State Board's claim that the documents for which *in camera* treatment and/or protected confidential treatment is sought meet the Commission's standards.³

7. Respondent's Counsel has conferred with Complaint Counsel in a good-faith effort to resolve by agreement the issues raised by this Motion, and Complaint Counsel has indicated that although it did not oppose Respondent's Motion for Leave to File, it may oppose Respondent's Motion for *in camera*/protected treatment of specific materials.

WHEREFORE, Respondent requests that certain documents designated as confidential by Respondent in accordance with the Protective Order and pursuant to North Carolina law be accorded confidential treatment and that Complaint Counsel be required to redact information designated by Respondent as confidential from Complaint Counsel's Post-Trial Filings in accordance with Rule 3.45(e), that references in the hearing transcript to Respondent's Confidential Materials be redacted, and that Respondent be permitted to re-file its Response to Complaint Counsel's Proposed Findings with its Confidential Materials redacted.

³ See *In re Hoescht Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) (describing requirement that motions for *in camera* treatment must include affidavits by persons "with personal knowledge to support their claim that the documents for which *in camera* treatment is sought meet the Commission's standards.")

This the 14 day of June, 2011.

ALLEN AND PINNIX, P.A.

/s/ M. Jackson Nichols

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on June 14, 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
Federal Trade Commission
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Washington, D.C. 20580
oalj@ftc.gov

This the 14 day of June, 2011.

/s/ M. Jackson Nichols

M. Jackson Nichols

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/ M. Jackson Nichols

M. Jackson Nichols

**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.)	

**PROPOSED ORDER ON MOTION FOR *IN CAMERA*/PROTECTED
TREATMENT OF RESPONDENT’S CONFIDENTIAL INFORMATION IN THE
RECORD AND COMPLAINT COUNSEL’S POST-TRIAL FILINGS**

Respondent has moved that it be allowed *in camera*/protected treatment of Respondent’s confidential information in the record and in Complaint Counsel’s Post-Trial Filings in accordance with Rule 3.45(e). Respondent makes this motion in light of certain discussions with Complaint Counsel as to the non-receipt of Complaint Counsel’s Rule 3.45(b) notice by Respondent Counsel. Respondent asserts that in accordance with the Protective Order and pursuant to North Carolina law, certain documents are to be accorded confidential treatment on the record and in post-trial filings.

Upon Respondent’s motion, the undersigned hereby orders certain documents designated as confidential by Respondent in accordance with the Protective Order and pursuant to North Carolina law be accorded confidential treatment and that Complaint Counsel redact information designated by Respondent as confidential from Complaint Counsel’s Post-Trial Filings in accordance with Rule 3.45(e), that references in the hearing transcript to Respondent’s Confidential Materials be redacted, and that

Respondent is permitted to re-file its Response to Complaint Counsel's Proposed Findings with its Confidential Materials redacted.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Dated: June _____, 2011

EXHIBIT 1 – SCHEDULE OF NORTH CAROLINA STATE BOARD’S CONFIDENTIAL MATERIALS

Synopsis: This schedule details the specific Confidential Materials for which the Respondent North Carolina State Board of Dental Examiners (“Respondent”, or the “State Board”) seeks protected treatment according to Rule 3.45. The State Board has designated these materials as “Confidential” (such materials the “Confidential Materials”) throughout the discovery process as described in Respondent’s Motion for Leave to File for *In Camera*/Protected Treatment of Respondent’s Confidential Information in the Record and Complaint Counsel’s Post-Trial Filings, filed June 6, 2011.

Pursuant to North Carolina law, the State Board has designated the following documents as confidential: (1) documents in open case files (detailed below); (2) memorandums or other logs produced by Terry Friddle regarding open cases and those proposed to be closed (CX130, CX160, CX234, CX235, CX270, CX303, CX315, CX316, CX317, CX318, CX319, CX320, CX321, CX368, CX439, CX462, CX478, CX479, CX480, CX481, CX482, CX483, CX530, CX622, CX623, CX624, CX625, CX628, CX656, CX658, CX659, CX660); and (3) closed session Board minutes (CX105, CX106, CX107, CX109, CX131, CX132, CX133, CX471, CX639, and CX640, such minutes subject to being “withheld from the public as long as public inspection would frustrate the purpose of a closed session” pursuant to North Carolina’s Open Meeting Law, N.C. Gen. Stat. § 143-318.10(e)). The State Board herewith provides the declaration of Bobby White, the Chief Operating Officer of the State Board. Mr. White has personal knowledge to support the State Board’s claim that the documents for which *in camera* treatment and/or protected confidential treatment is sought meet the Commission’s standards.¹

Respondent has designated such information confidential in accordance with the FTC Rules and the Protective Order of the Administrative Law Judge (“ALJ”) entered on June 18, 2010. The basis for such protection is described as follows.

Statutory Authority – North Carolina Law and ¶ 2 of Protective Order

Paragraph 2 of the Protective Order provides that

[a]ny document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, **or any regulation, interpretation, or precedent** concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, **shall be treated as confidential material for purposes of this order**. (emphasis added).

¹ See *In re Hoescht Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) (describing requirement that motions for *in camera* treatment must include affidavits by persons “with personal knowledge to support their claim that the documents for which *in camera* treatment is sought meet the Commission’s standards.”)

North Carolina General Statute 90-41(g) provides that “Records, papers, and other documents containing information collected or compiled by the Board, or its members or employees, as a result of investigations, inquiries, or interviews conducted in connection with a licensing or disciplinary matter, shall not be considered public records within the meaning of Chapter 132 of the General Statutes”

Pursuant to the North Carolina statute and the Protective Order’s mandate that “any document . . . that is entitled to confidentiality under . . . a regulation, interpretation or precedent . . . shall be treated as confidential”, Respondent has described in the tables below the exhibits that appear in Complaint Counsel’s Post-Trial Filings that are Confidential Materials and are subject to the Protective Order. Because the North Carolina statute provides that the entirety of such documents are subject to protection, the entirety of any document that falls within the statute must be protected from disclosure in accordance with the FTC Rules and the Protective Order.

Law Enforcement Privilege

Further, paragraph 1 of the Protective Order provides that “confidential material” can include any document that contains “privileged [or] competitively sensitive information.” The State Board’s Confidential Materials are also privileged under the law enforcement investigatory privilege because they concern civil and/or criminal investigatory files, and if the contents were divulged then the subject of the investigation would be able to obtain premature discovery of the law enforcement actions that may be taken against him.² Because all of the files within the Confidential Materials fall within the law enforcement privilege, the entirety of such files should be protected from disclosure in accordance with the FTC Rules and the Protective Order.

Sensitive Personal Information – Names of Complainants and Persons Under Investigation

16 C.F.R. 3.45(b) states that Sensitive Personal Information “shall include, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records.” (emphasis added). Thus personally identifying information can also be considered sensitive based on the context in which it appears. The State Board considers information regarding the personal identities of both complainants that are part of civil and/or criminal investigations regarding the unlicensed practice of dentistry as well as the names of the individuals that are under investigation to be sensitive personal information because of privacy concerns for the complaint

² See *Lykken v. Brady*, No. 07-4020-KES, 2008 WL 2077937, at *5 (D.S.D. May 14, 2008). “[T]he primary concern over disclosure of law enforcement reports is to prevent a party who is himself the subject of a criminal investigation from obtaining premature discovery of law enforcement actions that may be taken against him.” *Id.* (citing 3 WEINSTEIN’S FED. EVIDENCE § 509.24[2][a]).

and individual under investigation. Accordingly, such information is not necessary to this proceeding and should be redacted from the record.

Revenues of Board Members

Further, Respondent also notes that there are several instances where the teeth whitening revenues of former or current Board members are divulged. These Board members (Dr. Owens, Dr. Morgan, Dr. Burnham, and Dr. Wester) were, to Respondent's knowledge, never provided with any notice under 3.45(b) by Complaint Counsel that the revenues from their practices would be divulged, despite these Board members' requests that such information be treated as confidential.

The Board's Confidential Materials

The following charts provide a list by Complaint Counsel Exhibit Number of the exhibits that were designated as Confidential Materials and should be accorded protection consistent with the Protective Order and the FTC Rules under the procedures described in Rule 3.45(e). The schedule indicates what portion of documents in the Confidential Materials is entitled to protection and should not be made public. Additionally, the schedule indicates where confidential information from these Confidential Materials has appeared in Complaint Counsel's Post-Trial Brief and Proposed Findings of Fact, as well as Complaint Counsel's Responses to Respondent's Proposed Findings of Fact. The schedule also indicates where these materials are discussed in the hearing transcript.

Respondent's Confidential Replies to Complaint Counsel's Proposed Findings of Fact

Respondent notes that on page 5 of its Replies to Complaint Counsel's Proposed Findings of Fact, it objected as to the confidential nature of certain proposed findings of fact and in its responses thereto. In order to comply with the deadline imposed by Judge Chappell's Order Granting Respondent's Second Motion for Extension of Time and Rescheduling Closing Argument (April 25, 2011) and in reliance upon the Secretary's notification of May 2, 2011, that no other filings by either party would be posted on the public Commission website until further notice, Respondent electronically filed its responses as a public document.

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**TABLE 1 -- References to Confidential Documents in
Complaint Counsel's Post-Trial Brief and Proposed Findings of Fact**

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX43	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 274</u> identifies name of business under investigation from open case; <u>CC's Post-Trial Brief</u> includes information from complaint on page 12	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX92	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 274</u> identifies name of business under investigation from open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX106	Closed Session Board Minutes from August 10-11, 2007 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	Exhibit pages 001 to 011; Non-substantive/general reference in <u>CC's PFOF Nos. 124, 125 and 378</u> ; <u>CC's PFOF Nos. 379 and 380</u> quote and describe substance of closed session minutes; Non-substantive/general reference in <u>CC's Response to RPFOF No. 570</u>	Indefinitely per NCGS 143-318.10(e)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX107	Closed Session Board Minutes from February 7-8, 2008 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	Entire Document; Non-substantive/ general reference in <u>CC's PFOF Nos. 124 and 125</u> ; Non-substantive/ general reference in <u>CC's Response to RPFOF No. 570</u>	Indefinitely per NCGS 143-318.10(e)
CX109	Closed Session Board Minutes from March 14-15, 2008 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	Entire Document; Non-substantive/ general reference in <u>CC's PFOF Nos. 124 and 125</u> ; <u>CC's PFOF Nos. 222 and 223</u> refer to closed session minutes; <u>CC's Response to RPFOF Nos. 8 and 9</u> references substance of closed session minutes	Indefinitely per NCGS 143-318.10(e)
CX128	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 278</u> identifies name of business under investigation from open case and reveals details of open case; <u>CC's Response to RPFOF Nos. 227, 229, 230 and 238</u> identifies name of business under investigation from open case, also reveals the complainant's name and details of open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX160	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 278</u> identifies name of business under investigation from open case and complainant/individuals under investigation; also identifies certain details of investigation; <u>CC's Response to RPFOF No. 227, 229, 230 and 238</u> identifies name of business under investigation from open case, also reveals the complainant's name and details of open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX198	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 274</u> identifies name of business under investigation from open case; <u>CC's Post-Trial Brief</u> on page 12 refers to information from complaint in open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX245	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 274</u> identifies name of business under investigation from open case; <u>CC's Response to RPFOF No. 137</u> refers to a subsequent complaint in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX258	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 305</u> quotes investigator's memo in an open case; <u>CC's Post-Trial Brief</u> provides on page 22 direct quotes from an investigative memo in an open case, and also names the kiosk operator; <u>CC's Response to RPFOF No. 214</u> provides details about investigator's activities from investigative memo	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX276	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 274</u> identifies name of business under investigation from open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX278	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 220</u> identifies complainant and substance of complaint in an open case; <u>CC's PFOF No. 225</u> quotes from a complaint in an open case; <u>CC's PFOF No. 274</u> identifies name/business under investigation in an open case; <u>CC's Post-Trial Brief</u> at pages 13 and 16 cites to information in an open investigative file	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX292	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g)	Entire document; <u>CC's PFOF No. 1282</u> quotes from email to complainant in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX293	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 266</u> references case officer's action in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX297	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 266</u> references case officer's action in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX298	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's Response to RPFOF No. 3</u> on page 9 identifies name of business under investigation from open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX309	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 639</u> identifies person at company who responded to cease and desist letter and quotes from his response to the Board in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX311	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 266</u> references case officer's action in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX317	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation; <u>CC's Response to RPFOF Nos. 163 and 513</u> names business under investigation, and refers to content of the complaint and status of open case	Indefinitely until case file is closed or otherwise made public
CX340	Dr. Morgan Response to Subpoena Duces Tecum	Section 21(f) of the Federal Trade Commission Act, 15 U.S.C. § 57b-2(f), and FTC Rule 4.10; Protective Order	Entire Document: <u>CC's Response to RPFOF No. 583</u> provides revenue information for Dr. Morgan	Indefinitely
CX350	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 303</u> identifies the name of an individual and a business under investigation in an open case [1st sentence, although CX exhibit number is not provided]; <u>CC's Response to RPFOF No. 290</u> quotes an email from an investigator in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX365	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 218</u> identifies complainant and substance of complaint in an open case; <u>CC's PFOF No. 274</u> identifies name/business under investigation in an open case; <u>CC's PFOF No. 479</u> quotes from the investigative file of an open case; <u>CC's PFOF No. 1282</u> summarizes communications in the investigative file of an open case; <u>CC's Post-Trial Brief</u> on page 13 quotes the complainant from an open investigative file; <u>CC's Response to RPOF Nos. 251, 253 and 254</u> references discussions with the complainant in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX368	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation; <u>CC's PFOF No. 279</u> quotes from the investigative file of an open case	Indefinitely until case file is closed or otherwise made public
CX372	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire Document and/or names of individuals under investigation; <u>CC's PFOF No. 1286a</u> identifies the complainant and describes portions of the investigation in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX404	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 219</u> identifies complainant and quotes from the investigative file of an open case; <u>CC's PFOF No. 274</u> identifies name of business under investigation from open case; <u>CC's PFOF No. 306</u> quotes from the investigative file of an open case; <u>CC's Post-Trial Brief</u> on page 22 contains quotes from an email to the complainant in an open investigative case file; <u>CC's Response to RPFOF Nos. 1, 3, 99, 254 and 290</u> quotes from Mr. White's correspondence with a complainant in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX411	Telephone call log referencing open/pending investigative cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 274</u> identifies name of business under investigation from open case; <u>CC's PFOF No. 278</u> provides details about an open case; <u>CC's Response to RPFOF Nos. 234 and 238</u> identifies the complainants in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX422	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire document; <u>CC's PFOF Nos. 224 & 225</u> describe and quote from communications in the investigative file of an open case; <u>CC's Post-Trial Brief</u> cites to and describes this document from an open case on page 16	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX447	Spreadsheet of open cases for Dr. Owens	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation; <u>CC's Response to RPFOF Nos. 163 and 513</u> names business under investigation, and refers to the complainants in open cases	Indefinitely until case file is closed or otherwise made public
CX462	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation; <u>CC's PFOF Nos. 1178 & 1180</u> provide details about the investigative file from an open case; <u>CC's Response to RPFOF Nos. 163 and 513</u> names business under investigation, and refers to content of the complaint and status of open case	Indefinitely until case file is closed or otherwise made public

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX467	Dr. Owens Response to Subpoena Duces Tecum	Section 21(f) of the Federal Trade Commission Act, 15 U.S.C. § 57b-2(f), and FTC Rule 4.10; Protective Order	Entire Document: <u>CC's PFOF Nos. 155 and 1290</u> provides revenue information for Dr. Owens; <u>CC's Response to RPFOF No. 583</u> provides revenue information for Dr. Owens	Indefinitely
CX476	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire document; <u>CC's PFOF No. 1165</u> describe the contents of complaint in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX477	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire document; <u>CC's PFOF No. 1375</u> <u>reference a complaint/complainant</u> in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX517	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire Document; <u>CC's PFOF Nos. 1178, 1179 and 1180</u> provide details about the investigative file from an open case and quotes from the file; <u>CC's Response to RPFOF No. 167</u> identifies a business that received a cease and desist letter and quotes from correspondence with a complainant in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX530	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation; <u>CC's PFOF No. 654</u> provides details from the investigative file of an open case	Indefinitely until case file is closed or otherwise made public
CX606	Dr. Burnham Response to Subpoena Duces Tecum	Section 21(f) of the Federal Trade Commission Act, 15 U.S.C. § 57b-2(f), and FTC Rule 4.10; Protective Order	Entire Document: <u>CC's Response to RPFOF No. 583</u> provides revenue information for Dr. Burnham [misidentified as Dr. Morgan]	Indefinitely
CX614	Dr. Wester Response to Subpoena Duces Tecum	Section 21(f) of the Federal Trade Commission Act, 15 U.S.C. § 57b-2(f), and FTC Rule 4.10; Protective Order	Entire Document: <u>CC's Response to RPFOF No. 583</u> provides revenue information for Dr. Wester	Indefinitely
CX622	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation; <u>CC's PFOF No. 630</u> quotes from communications in the investigative file of an open case	Indefinitely until case file is closed or otherwise made public
CX624	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation; <u>CC's Response to RPFOF No. 212</u> names business under investigation	Indefinitely until case file is closed or otherwise made public

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX626	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>CC's PFOF No. 221</u> identifies complainant and substance of complaint and quotes from complaint; <u>CC's Post-Trial Brief</u> on page 13 quotes from a complaint made in an open investigative file	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX658	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation; <u>CC's PFOF No. 637</u> identifies business under investigation and quotes from cease and desist letter recipient's response to the Board	Indefinitely until case file is closed or otherwise made public
CX660	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation; <u>CC's PFOF No. 636</u> identifies the business under investigation and provides details about its response to the Board's cease and desist letter	Indefinitely until case file is closed or otherwise made public

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**TABLE 2 -- References to Respondent's Confidential Documents
in Complaint Counsel's Response to Respondent's Proposed Findings of Fact**

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
RX9	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire document; <u>CC's Response to RPFOF No. 134</u> provides direct quotes from complaint email in an open case; <u>CC's Response to RPFOF No. 135</u> discusses contents of investigative materials and communications with case officer in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
RX14	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire document; <u>CC's Response to RPFOF No. 152</u> identifies the business complained about and contents of the complaints in an open case; <u>CC's Response to RPFOF Nos. 283 and 361</u> discuss content of complaint in an open case [exhibit nos. incorrectly identified in the response as RX14]	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
RX17	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire document; <u>CC's Response to RPFOF Nos. 163 and 513</u> identify the business complained about, quote from complaints and discuss the content of those complaints, and describes the content of legal counsel's memorandum in an open case; <u>CC's Response to RPFOF No. 164</u> identifies the business complained about, quotes from complaints, and discusses the content of those complaints in an open case; <u>CC's Response to RPFOF No. 166</u> identifies the business complained about, discusses the content of those complaints, and describes the content of legal counsel's memorandum in an open case; <u>CC's Response to RPFOF Nos. 514, 515 and 519</u> names the business under investigation and discusses the content of a complaint in an open case; <u>CC's Response to RPFOF No. 1178</u> references and discusses substance of complaint in an open case [exhibit no. incorrectly identified in the response as RX1]	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
RX21	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire document; <u>CC's Response to RPFOF No. 183</u> quotes from a complaint and a patient record in an open case; <u>CC's Response to RPFOF Nos. 525 and 526</u> quotes from the complaint and patient record, and describes content of patient record in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
RX30	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire document; <u>CC's Response to RPFOF No. 232</u> discusses the investigator's affidavit in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

**TABLE 3 -- References to Confidential Documents in
Respondent's Replies to Complaint Counsel's Proposed Findings of Fact**

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
RX30	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire document; <u>Respondent's Response to CC's PFOF No. 639</u> discusses the ongoing investigation in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
RX32	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire document; <u>Respondent's Response to CC's PFOF No. 278</u> discusses evidence in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX106	Closed Session Board Minutes from August 10-11, 2007 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	Exhibit pages 001 to 011; <u>Respondent's Response to CC's PFOF No. 380</u> describes contents of closed session minutes	Indefinitely per NCGS 143-318.10(e)
CX109	Closed Session Board Minutes from March 14-15, 2008 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	Entire Document; <u>Respondent's Response to CC's PFOF No. 222</u> quotes from closed session minutes	Indefinitely per NCGS 143-318.10(e)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX258	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire document; <u>Respondent's Response to CC's PFOF No. 305</u> discusses contents of investigator's memo in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX278	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>Respondent's response to CC's PFOF No. 225</u> discusses substance of complaint in open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX292	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g)	Entire document; <u>Respondent's Response to CC's PFOF No. 1282</u> discusses email to complainant in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX311	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; Respondent's Response to CC's PFOF No. 266 references case officer's action in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX365	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>Respondent's Response to CC's PFOF No. 218</u> discusses and quotes from complaint in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX404	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; <u>Respondent's Responses to CC's PFOF No. 219</u> names complainant and quotes/discusses substance of complaint in open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX422	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire document; <u>Respondent's Response to CC's PFOF Nos. 224 and 225</u> discusses substance of/quotes from complaint in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX462	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire Document and/or names of individuals under investigation; Respondent's Response to <u>CC's PFOF Nos. 1178</u> references and discusses substance of complaint in an open case	Indefinitely until case file is closed or otherwise made public

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX517	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire Document; <u>Respondent's Response to CC's PFOF Nos. 1178 and 1179</u> quote from and discuss contents of complaint in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX626	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire document; <u>Respondent's Response to CC's PFOF No. 221</u> discusses/quotes from complaint in an open case	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

TABLE 4 -- References to Confidential Documents in the Transcript of the Hearing

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX106	Closed Session Board Minutes from August 10-11, 2007 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	<p>Exhibit pages 001 to 011; testimony/questioning re: closed session minutes</p> <p>Vol. 12, p. 2792, l. 25 (“These”) → Vol. 12, p. 2793, l. 1 (“minutes”)</p> <p>Vol. 12, p. 2793, l. 17 (“I”) → Vol. 12, p. 2793, l. 19 (“items”)</p> <p>Vol. 12, p. 2829, l. 25 (“CX 106”) → Vol. 12, p. 2830, l. 12 (correct”)</p> <p>Vol. 12, p. 2831, l. 6 (“Now”) → Vol. 12, p. 2831, l. 9 (“correct”)</p>	Indefinitely per NCGS 143-318.10(e)
CX107	Closed Session Board Minutes from February 7-8, 2008 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	<p>Testimony/questioning re: closed session minutes</p> <p>Vol. 12, p. 2867, l. 2 (“If”) → Vol. 12, p. 2867, l. 22 (“Correct”)</p>	Indefinitely per NCGS 143-318.10(e)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX278	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	<p>Testimony/questioning re: content of complaint in an open case</p> <p>Vol. 10, p. 2317, l. 21 (“This”) → Vol. 10, p. 2318, l. 16 (“professionalism”)</p> <p>Vol. 10, p. 2318, l. 23 (“Then”) → Vol. 10, p. 2319, l. 4 (“whole”)</p> <p>Vol. 10, p. 2319, l. 9 (“Ms.”) → Vol. 10, p. 2319, l. 9 (“LeCann”)</p> <p>Vol. 10, p. 2319, l. 11 (“Ms.”) → Vol. 10, p. 2319, l. 11 (“LeCann”)</p>	Until the document “is received and admitted into evidence in any hearing before the Board.” N.C.G.S. 90-41(g)
CX292	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g)	<p>Testimony/questioning discussing and quoting complaint in an open case</p> <p>Vol. 10, p. 2272, l. 3 (“So”) → Vol. 10, p. 2272, l. 6 (“attention”)</p> <p>Vol. 10, p. 2272, l. 10 (“So”) → Vol. 10, p. 2272, l. 17 (“correct”)</p> <p>Vol. 10, p. 2273, l. 1 (“that”) → Vol. 10, p. 2273, l. 7 (“investigation”)</p>	Until the document “is received and admitted into evidence in any hearing before the Board.” N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX293	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Questioning and testimony re: case officer actions and complaint in an open case Vol. 10, p.2323, l. 3 ("This") → Vol. 10, p. 2324, l. 18 ("theory")	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX321	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	<p>Questioning/testimony discusses contents of/ quotes from summaries of open cases</p> <p>Vol. 6, p. 1447, l. 2 (“This”) → Vol. 6, p. 1447, l. 8 (“eight”)</p> <p>Vol. 6, p. 1447, l. 17 (“Now”) → Vol. 6, p. 1447, l. 20 (“Board”)</p> <p>Vol. 6, p. 1448, l. 3 (“With”) → Vol. 6, p. 1448, l. 9 (“dentistry”)</p> <p>Vol. 6, p. 1448, l. 24 (“If”) → Vol. 6, p. 1449, l. 4 (“pending”)</p> <p>Vol. 6, p. 1449, l. 12 (“And”) → Vol. 6, p. 1449, l. 13 (“injunction”)</p> <p>Vol. 10, p. 2225, l. 12 (“When”) → Vol. 10, p. 2225, l. 21 (“open”)</p> <p>Vol. 10, p. 2230, l. 21 (“Did”) → Vol. 10, p. 2231, l. 17 (“No”)</p> <p>Vol. 10, p. 2234, l. 14 (“Case”) → Vol. 10, p. 2234, l. 17 (“sir”)</p>	Indefinitely until case file is closed or otherwise made public

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX365	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	<p>Testimony/questioning re: complaint in an open case, with direct quotes</p> <p>V. 10, p. 2263, l. 9 (“The”) → Vol. 10, p. 2263, l. 11 (“Stan”)</p> <p>Vol. 10, p. 2263, l. 17 (“There’s”) → Vol. 10, p. 2263, l. 24 (“Hardesty”)</p> <p>Vol. 10, p. 2264, l. 2 (“This”) → Vol. 10, p. 2265, l. 23 (“\$100”)</p> <p>Vol. 10, p. 2266, l. 1 (“And”) → Vol. 10, p. 2266, l. 4 (“letter”)</p> <p>Vol. 10, p. 2266, l. 10 (“There”) → Vol. 10, p. 2266, l. 15 (“investigation”)</p> <p>Vol. 10, p. 2267, l. 13 (“This”) → Vol. 10, p. 2267, l. 14 (“stating”)</p>	Until the document “is received and admitted into evidence in any hearing before the Board.” N.C.G.S. 90-41(g)
CX471	Closed Session Board Minutes from January 7-9, 2010 Meeting	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	<p>Testimony/questioning re: closed session minutes</p> <p>Vol. 10, p. 2315, l. 4 (“Now”) → Vol. 10, p. 2315, l. 15 (“yes”)</p> <p>Vol. 10, p. 2316, l. 4 (“Mr.”) → Vol. 10, p. 2317, l. 17 (“case”)</p>	Indefinitely per NCGS 143-318.10(e)

TABLE 5 -- Confidential Exhibits Not Mentioned at the Hearing and Not Substantively Referenced in Post-Trial Filings

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX93	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX105	Closed Session Board Minutes from February 9, 2007 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	Entire Document	Indefinitely per NCGS 143-318.10(e)
CX109	Closed Session Board Minutes from March 14-15, 2008 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	Non-substantive/general reference in <u>CC's Response to RPFOf No. 570</u>	Indefinitely per NCGS 143-318.10(e)
CX121	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX125	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX130	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX131	Closed Session Board Minutes from December 12-13, 2008 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	Entire Document	Indefinitely per NCGS 143-318.10(e)
CX132	Closed Session Board Minutes from October 3-4, 2008	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	Entire Document	Indefinitely per NCGS 143-318.10(e)
CX133	Closed Session Board Minutes from April 4-5, 2008 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	Entire Document	Indefinitely per NCGS 143-318.10(e)
CX199	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX200	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; Non-substantive/ general reference in <u>CC's PFOF No. 111</u>	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX201	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; Non-substantive/general reference in <u>CC's PFOF No. 111</u>	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX238	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX246	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX252	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX265	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; Non-substantive/general reference in <u>CC's PFOF No. 273</u> and 277	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX270	Case log identifying open/pending investigative cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX280	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX293	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; Non-substantive/general reference in <u>CC's PFOF Nos. 273</u> and 275	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX303	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation; Non-substantive/general reference in <u>CC's PFOF No. 206</u>	Indefinitely until case file is closed or otherwise made public
CX307	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX308	Documents from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; Non-substantive/general reference in <u>CC's PFOF Nos. 487 and 518</u>	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX310	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX312	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; Non-substantive/general reference in <u>CC's PFOF No. 412</u>	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX313	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; Non-substantive/general reference in <u>CC's PFOF No. 412</u>	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX314	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX315	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX316	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX318	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX319	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX320	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX321	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX322	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX352	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX406	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX436	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX438	Documents from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX439	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX441	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX443	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX444	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX448	Document referencing open/pending investigative case files	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX453	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX454	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX455	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX456	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX457	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX458	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX465	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document; Non-substantive/general reference in <u>CC's PFOF Nos. 273 and 275</u>	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX466	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX477	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order	Entire document; <u>CC's PFOF Nos. 272 and 273 reference a complaint in an open case</u>	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX478	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX479	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX480	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX481	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX482	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX483	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX516	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX528	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX536	Document referencing open/pending investigative case files	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX537	Document referencing open/pending investigative case files	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX538	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX539	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX543	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX546	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX547	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX548	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX623	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX625	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX628	Log of cases referencing open/pending investigative case files	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX639	Closed Session Board Minutes from April 1-2, 2005 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	Entire Document	Indefinitely per NCGS 143-318.10(e)
CX640	Closed Session Board Minutes from May 5-7, 2005 Meeting	Law Enforcement Privilege; N.C.G.S. 143-318.10(e); Protective Order	Entire Document	Indefinitely per NCGS 143-318.10(e)

Exhibit No.	Exhibit Description	Basis for Confidentiality	Portions Subject to 3.45(e) Protection	Duration of Protection
CX656	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX659	T. Friddle Memorandums from open cases	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (names of individuals under investigation)	Entire Document and/or names of individuals under investigation	Indefinitely until case file is closed or otherwise made public
CX662	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)
CX663	Document from open/pending investigative case file	Law Enforcement Privilege; N.C.G.S. 90-41(g); Protective Order; contains SPI (name of complainant/individuals under investigation)	Entire document	Until the document "is received and admitted into evidence in any hearing before the Board." N.C.G.S. 90-41(g)

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



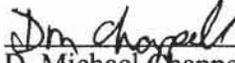
_____)
In the Matter of)
)
The North Carolina Board of)
Dental Examiners,)
Respondent.)
_____)

DOCKET NO. 9343

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: June 18, 2010



ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL-FTC Docket No. 9343" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL-FTC Docket No. 9343" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

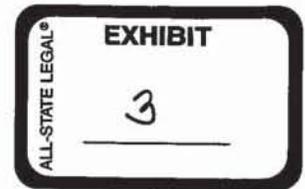
10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

**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.)	

DECLARATION OF BOBBY D. WHITE

Pursuant to 28 U.S.C. § 1746, I hereby make the following statement:

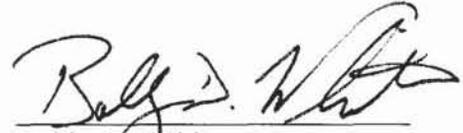
1. I have personal knowledge of the facts set forth in this declaration and if called as a witness, I could and would testify competently under oath to such facts.
2. I am currently the Chief Operating Officer of the North Carolina State Board of Dental Examiners (the "State Board"), and have served in that capacity since January 2004. I graduated from Barton College magna cum laude in 1979 and received a master's of divinity from Duke Divinity School in 1982. I earned my law degree in 1997, and I am a licensed attorney in North Carolina.
3. Before I came to work at the State Board, I was the deputy counsel with the North Carolina State Bar.
4. In my capacity as the Chief Operating Officer for the State Board, in addition to handling administrative duties such as the daily operations of the organization, I advise the State Board on legal issues with respect to disciplinary matters.
5. I make this Declaration on the basis of my professional experience as well as my personal knowledge with respect to the appropriate standards for maintaining the confidentiality of the State Board's files pursuant to applicable law, including North Carolina law.

6. North Carolina General Statute 90-41(g) provides that “Records, papers, and other documents containing information collected or compiled by the Board, or its members or employees, as a result of investigations, inquiries, or interviews conducted in connection with a licensing or disciplinary matter, shall not be considered public records within the meaning of Chapter 132 of the General Statutes”
7. Additionally, because the State Board serves as a law enforcement agency for the state of North Carolina with respect to licensing and disciplinary matters relating to the practice of dentistry, records maintained by the State Board in the course of its law enforcement duties are privileged under the law enforcement investigatory privilege because they concern civil and/or criminal investigatory files, and if the contents were divulged then the subject of the investigation would be able to obtain premature discovery of the law enforcement actions that may be taken against him.
8. Pursuant to North Carolina law, the State Board has designated the following documents as confidential (the “Confidential Materials”):
 - a. documents in open case files, but not including cease and desist letters or documents filed with a court (as further detailed in the schedule accompanying Respondent’s Motion for *In Camera*/Protected Treatment);
 - b. memorandums and other case logs produced by Terry Friddle regarding open investigative cases and those proposed to be closed; and
 - c. closed session Board minutes, which pursuant to the North Carolina Open Meetings Law may be “withheld from the public as long as public inspection would frustrate the purpose of a closed session.” N.C. Gen. Stat. § 143-318.10(e).

9. If the Court fails to preserve and protect the confidentiality of the above listed documents, and if these documents are therefore made public before the investigation is completed, both the State Board and the state of North Carolina are likely to suffer serious injury due to the fact that disclosure would seriously compromise the State Board's enforcement methods by making them public and allowing individuals under investigation premature access to discovery prior to any enforcement proceedings against them.
10. Further, 16 C.F.R. 3.45(b) states that Sensitive Personal Information "shall include, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records."
11. The State Board considers information regarding the personal identities of complainants to the State Board that are part of civil and/or criminal investigations regarding the unlicensed practice of dentistry, as well as the names of the individuals that are under investigation to be sensitive personal information because of privacy concerns for the complainant and individual under investigation.
12. Under North Carolina General Statute 90-41(g) and the law enforcement privilege, any document that is part of the State Board's investigative files must remain confidential for an indefinite period until the document "is received and admitted into evidence in any hearing before the Board, [and] it shall then be a public record within the meaning of Chapter 132 of the General Statutes." Documents under ¶ 8.a. and b. fall within this category.

13. Under North Carolina General Statute 143-318.10(e), the closed session Board minutes described in ¶ 8.c. must be “withheld from the public as long as public inspection would frustrate the purpose of a closed session.”

Dated: June 14, 2011



Bobby D. White
Chief Operating Officer
NC State Board of Dental Examiners
507 Airport Boulevard, Suite 105
Morrisville, North Carolina