

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.)	

**MOTION TO STRIKE MELANIE SABO'S APPEARANCE
FROM THE RECORD**

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 strike all references to an appearance by Melanie Sabo on behalf of the Federal Trade Commission ("FTC" or "Commission") at the prehearing conference and evidentiary hearing before the ALJ in this matter. In support of this motion, Respondent shows the following:

1. The evidentiary hearing in this matter was commenced on February 17, 2011, and at time of the filing of this motion has not yet concluded.
2. At the time of filing this motion, Ms. Sabo has not entered a notice of appearance pursuant to FTC Rule of Adjudicative Procedure 4.1(d).
3. Despite having not entered a notice of appearance in this matter, Ms. Sabo has held herself out as appearing on behalf of the Commission in these proceedings, including but not limited to:

a. Participating in a counsel-to-counsel conference ordered by the ALJ at the outset of Professor John Kwoka's direct examination; and

b. Frequently conferring on a daily basis with Complaint Counsel during the course of the evidentiary hearing.

4. Ms. Sabo is also indicated as appearing on behalf of the FTC in the transcripts of the evidentiary hearing. See examples of transcript excerpts attached hereto as Exhibit A (Prehearing Conf. Tr. Vol. 2, 52:8; Tr. Vol. 1, 3:8; Tr. Vol. 7, 1525:9).

5. In addition, Ms. Sabo was introduced by Complaint Counsel Richard Dagen several times during the prehearing conference and evidentiary hearing on February 17, 2011 as appearing on behalf of the Commission. See attached Exhibit A (Prehearing Tr. Vol. 2, 53:25-54:2; Tr. Vol. 1, 4:14-4:17).

6. Respondent's Counsel has conferred with Complaint Counsel in a good-faith effort to resolve by agreement the issues raised by this motion and has been unable to reach such agreement. Further, Complaint Counsel has indicated that they will oppose this motion.

WHEREFORE, Respondent requests that Ms. Sabo's name be stricken from the record of the prehearing conference and evidentiary hearing in the context of making an appearance on behalf of the Commission.

This the 10th day of March, 2011.

ALLEN AND PINNIX, P.A.

/s/ Alfred P. Carlton, Jr.

By: _____

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Alfred P. Carlton, Jr.
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Attorneys for Respondent
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Telephone: 919-755-0505
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Email: acarlton@allen-pinnix.com

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 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
600 Pennsylvania Avenue N.W.
Room H-110
Washington, D.C. 20580
oyalj@ftc.gov

This the 10th day of March, 2011.

/s/ Alfred P. Carlton, Jr.

Alfred P. Carlton, Jr.

CERTIFICATION FOR ELECTRONIC FILING

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

/s/ Alfred P. Carlton, Jr.

Alfred P. Carlton, Jr.

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

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

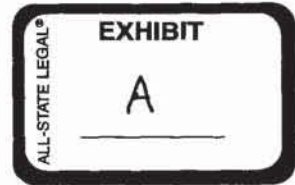
**PROPOSED ORDER ON MOTION TO STRIKE MELANIE SABO'S
APPEARANCE FROM THE RECORD**

Upon the motion of the Respondent to strike all references to an appearance by Melanie Sabo on behalf of the Federal Trade Commission at the prehearing conference and evidentiary hearing before the ALJ in this matter, the undersigned hereby orders that all references to Ms. Sabo in the transcripts of those proceedings be stricken.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Dated: March ___, 2011



In the Matter of:

North Carolina Board of Dental Examiners

February 17, 2011
Final Prehearing Conference
Vol. 2

Condensed Transcript with Word Index



For The Record, Inc.
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FEDERAL TRADE COMMISSION
 I N D E X
 IN RE NORTH CAROLINA BOARD OF DENTAL EXAMINERS
 FINAL PREHEARING CONFERENCE
 VOLUME 2
 FEBRUARY 17, 2011

EXHIBITS	FOR ID	IN EVID	IN CAMERA	STRICKEN/REJECTED
CX				
(none)				
RX				
(none)				
JX				
Number1		56		
Number2		56		
DX				
(none)				

1 APPEARANCES:
 2
 3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:
 4 RICHARD B. DAGEN, ESQ.
 5 WILLIAM L. LANNING, ESQ.
 6 MELISSA WESTMAN-CHERRY, ESQ.
 7 MICHAEL J. BLOOM, ESQ.
 8 MELANIE SABO, ESQ.
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1 UNITED STATES OF AMERICA
 2 BEFORE THE FEDERAL TRADE COMMISSION
 3
 4 In the Matter of)
 5 THE NORTH CAROLINA) Docket No. 9343
 6 BOARD OF DENTAL EXAMINERS)
 7 -----)
 8
 9
 10 Thursday, February 17, 2011
 11 10:07 a.m.
 12 FINAL PREHEARING CONFERENCE
 13 VOLUME 2
 14
 15 BEFORE THE HONORABLE D. MICHAEL CHAPPELL
 16 Administrative Law Judge
 17 Federal Trade Commission
 18 600 Pennsylvania Avenue, N.W.
 19 Washington, D.C.
 20
 21
 22 Reported by: Josett F. Whalen, RMR-CRR
 23
 24
 25

1 PROCEEDINGS
 2 - - - - -
 3 JUDGE CHAPPELL: Call to order Docket 9343.
 4 Good morning, everyone.
 5 MR. M. NICHOLS: Good morning, Your Honor.
 6 JUDGE CHAPPELL: I'm going to first continue and
 7 conclude the final prehearing conference.
 8 All right. So procedurally, so you know what's
 9 going on, I'm going to take I assume a joint exhibit and
 10 anything else regarding the final prehearing that we
 11 discussed on Tuesday. I'm going to close that, and then
 12 we're going to start the hearing on the merits.
 13 So I'll start with appearances for the
 14 government.
 15 MR. DAGEN: Your Honor, Richard Dagen,
 16 complaint counsel.
 17 With me today are my co-lead counsel,
 18 Bill Lanning and Melissa Westman, and also at the table
 19 Terri Martin, who will be helping out with the slide
 20 presentation, our technical matters.
 21 Also we have Michael Bloom, who will be
 22 presenting our first witness.
 23 MR. BLOOM: Good morning, Your Honor.
 24 JUDGE CHAPPELL: Good morning.
 25 MR. DAGEN: And Melanie Sabo, the assistant

54	<p>1 director of the Anticompetitive Practices Division in 2 the Bureau of Competition. 3 JUDGE CHAPPELL: Okay. Thank you. 4 And for respondent? 5 MR. M. NICHOLS: Good morning, Your Honor. 6 Jack Nichols from the law firm of 7 Allen and Pinnix. 8 With me is my partner, A.P. Carlton, also of the 9 North Carolina bar, and Jack Nichols of the D.C. and 10 Maryland bar, who will also be assisting us in the 11 hearing. 12 JUDGE CHAPPELL: Okay. Thank you. 13 MR. M. NICHOLS: Mr. Allen may be appearing but 14 is not here today. He is also a partner with 15 Allen and Pinnix. 16 JUDGE CHAPPELL: All right. Thank you. 17 At the end of the day Tuesday, the parties 18 indicated they worked out most of their objections to 19 the exhibits. 20 Do the parties have a joint exhibit to offer 21 that lists stipulations or exhibits or both? 22 MR. DAGEN: Your Honor, I believe we have 23 worked out all objections save maybe two documents 24 between the two sides. We do have a JX 1 and a JX 2 25 relating to those documents. This -- we would like to</p>	56	<p>1 JUDGE CHAPPELL: And I don't see the exhibit, 2 but what you're telling me, is that limitation in the 3 document itself? 4 MR. DAGEN: Yes, it is. 5 JUDGE CHAPPELL: Its limited admissibility? 6 MR. DAGEN: That's correct. 7 JUDGE CHAPPELL: And what about stipulations? 8 MR. DAGEN: The stipulations have been shared 9 between both sides. We sat down, worked out a fair 10 number of stipulations. They just need to be proofread 11 at this time, and I believe they will be available 12 either -- certainly by tomorrow, Your Honor. 13 MR. M. NICHOLS: Your Honor, we've looked them 14 over, and I think that they're fine. I caught one or 15 two typos which I think were the translation between the 16 documents, but I think we'll easily be able to finalize 17 those by tomorrow. 18 JUDGE CHAPPELL: That will be fine. 19 So JX 1 and JX 2 are admitted. 20 (Joint Exhibit Number 1 was admitted into 21 evidence.) 22 (Joint Exhibit Number 2 was admitted into 23 evidence.) 24 JUDGE CHAPPELL: What's the status of the review 25 for sensitive personal information contained in the</p>
55	<p>1 take the time to brand them before we present them to 2 the court, but we would like to introduce them at this 3 time if that is permissible. 4 JUDGE CHAPPELL: And you've signed JX 1? 5 MR. DAGEN: Yes. Both JX 1 and JX 2 have been 6 signed by both complaint counsel and by respondent's 7 counsel. 8 JUDGE CHAPPELL: And Mr. Nichols? 9 MR. M. NICHOLS: Yes, sir, that's correct. 10 JUDGE CHAPPELL: So you're offering JX 1 and 2? 11 MR. DAGEN: Correct, Your Honor. 12 JUDGE CHAPPELL: Give me a brief description of 13 etch. 14 MR. DAGEN: JX 1 involves most of the exhibits 15 that were presented on exhibit lists prior to the 16 deadline or on the deadline for providing notice to the 17 other side of exhibits that were going to be proffered. 18 Exhibit JX 2 involves documents that respondent 19 subsequently after that deadline presented to complaint 20 counsel with the notion that they would be used as 21 demonstrative exhibits. 22 So we have separated those two out. The JX 1 23 would be admissible for whatever purposes they are. The 24 JX 2 would be limited as demonstrative exhibits, so we 25 just separated those out.</p>	57	<p>1 documents? 2 MR. DAGEN: We have exchanged I believe our CD 3 with the respondent. We have now burned a new CD I 4 believe that takes into account some additions that 5 respondent identified, and they are in the process of -- 6 they will be in the process of reviewing that. I don't 7 think there will be any issues with respect to the SHI 8 or other issues of confidentiality. 9 There was one other issue that I believe 10 respondent's counsel wanted to address with respect to 11 confidentiality with the witness that they were 12 planning on calling as to whether or not that witness 13 has waived his rights with respect to certain health 14 issues. 15 JUDGE CHAPPELL: Okay. And I expect both sides 16 to instruct your witnesses to be careful about 17 sensitive personal information, and I expect both sides 18 to be on guard to object to protect the record should 19 information be disclosed so I can designate that part of 20 the record in camera. 21 MR. DAGEN: Yes, Your Honor. 22 MR. M. NICHOLS: Yes, sir, that's correct. 23 JUDGE CHAPPELL: All right. Thank you. 24 MR. DAGEN: Your Honor, one brief point on 25 that, in connection with the prior conference that we</p>

In the Matter of:

North Carolina Board of Dental Examiners

February 17, 2011

Vol. 1

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1 FEDERAL TRADE COMMISSION
 2 I N D E X
 3 IN RE NORTH CAROLINA BOARD OF DENTAL EXAMINERS
 4 TRIAL VOLUME 1
 5 PUBLIC RECORD
 6 FEBRUARY 17, 2011
 7
 8 WITNESS: DIRECT CROSS REDIRECT RECROSS VOIR
 9 GINIGER 75
 10
 11 EXHIBITS FOR ID IN EVID IN CAMERA STRICKEN/REJECTED
 12 CX
 13 (none)
 14
 15 RX
 16 (none)
 17
 18 JX
 19 (none)
 20
 21 DX
 22 (none)
 23
 24
 25

1 APPEARANCES:
 2
 3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:
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1 UNITED STATES OF AMERICA
 2 BEFORE THE FEDERAL TRADE COMMISSION
 3
 4 In the Matter of)
 5 THE NORTH CAROLINA) Docket No. 9343
 6 BOARD OF DENTAL EXAMINERS)
 7 -----)
 8
 9
 10 Thursday, February 17, 2011
 11 10:22 a.m.
 12 TRIAL VOLUME I
 13 PUBLIC RECORD
 14
 15 BEFORE THE HONORABLE D. MICHAEL CHAPPELL
 16 Administrative Law Judge
 17 Federal Trade Commission
 18 600 Pennsylvania Avenue, N.W.
 19 Washington, D.C.
 20
 21
 22 Reported by: Josett F. Whalen, RMR-CRR
 23
 24
 25

1 P R O C E E D I N G S
 2 - - - - -
 3 JUDGE CHAPPELL: All right. Let me call to
 4 order the trial on the merits, Docket 9343,
 5 In Re North Carolina State Board of Dental Examiners.
 6 And for the record, I'll start with the
 7 appearances of the parties, and government, you're
 8 first.
 9 MR. DAGEN: Yes, Your Honor.
 10 Richard Dagen, complaint counsel.
 11 With me today is co-lead counsel, Bill Lanning,
 12 and Melissa Westman-Cherry, along with Terri Martin who
 13 will be running our technology aspect of this.
 14 Also Michael Bloom, seated right behind me, he
 15 will be handling the first witness today, and
 16 Melanie Sabo, the assistant director for anticompetitive
 17 practices.
 18 JUDGE CHAPPELL: Thank you.
 19 And for respondent?
 20 MR. M. NICHOLS: Jack Nichols of the
 21 North Carolina bar from the law firm of Allen and Pinnix
 22 for the North Carolina State Board of Dental Examiners.
 23 With me is my partner, A.P. Carlton, and
 24 Jackson Nichols of the D.C. and Maryland bar.
 25 Thank you.

In the Matter of:

North Carolina Board of Dental Examiners

March 1, 2011

Public Record

Trial Vol. 7

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1 FEDERAL TRADE COMMISSION
 2 I N D E X
 3 IN RE NORTH CAROLINA BOARD OF DENTAL EXAMINERS
 4 DOCKET NO. 9343
 5 TRIAL VOLUME 7
 6 PUBLIC RECORD
 7 MARCH 1, 2011
 8 WITNESS: DIRECT CROSS REDIRECT RECROSS VOIR
 9 OWENS 1535
 10 BAUMER 1684
 11
 12 EXHIBITS FOR ID IN EVID IN CAMERA STRICKEN/REJECTED
 13 CX
 14 Number823 1529
 15 Number826 1529
 16 Number827 1647
 17 Number828 1647
 18
 19 RX
 20 (none)
 21 JX
 22 (none)
 23 DX
 24 (none)
 25

1524

1 UNITED STATES OF AMERICA
 2 BEFORE THE FEDERAL TRADE COMMISSION
 3
 4 In the Matter of)
 5 THE NORTH CAROLINA) Docket No. 9343
 6 BOARD OF DENTAL EXAMINERS)
 7 -----)
 8
 9
 10 Tuesday, March 1, 2011
 11 9:32 a.m.
 12 TRIAL VOLUME 7
 13 PUBLIC RECORD
 14
 15 BEFORE THE HONORABLE D. MICHAEL CHAPPELL
 16 Administrative Law Judge
 17 Federal Trade Commission
 18 600 Pennsylvania Avenue, N.W.
 19 Washington, D.C.
 20
 21
 22 Reported by: Josett F. Whalen, RMR-CRR
 23
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 25

1525

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1526

1 P R O C E E D I N G S
 2 - - - - -
 3 JUDGE CHAPPELL: Back on the record Docket 9343.
 4 Mr. Dagen, are you ready?
 5 MR. M. NICHOLS: Your Honor, a couple
 6 housekeeping things before we resume cross if I may.
 7 JUDGE CHAPPELL: Go ahead.
 8 MR. M. NICHOLS: We appreciate the fact that
 9 you arranged for court yesterday, and one of our
 10 witnesses, Dr. Hardesty, who's a dentist, had to go
 11 back, so I've told Mr. Dagen that he won't be available
 12 today. We'll make him available next week if we have
 13 to go that far.
 14 JUDGE CHAPPELL: And if we don't go that far,
 15 what's plan B?
 16 MR. M. NICHOLS: Well, I originally hoped that
 17 we could finish our case by Thursday, and so depending
 18 upon when you plan to start court the next week --
 19 JUDGE CHAPPELL: We're starting on Tuesday.
 20 MR. M. NICHOLS: So that's when we would bring
 21 Dr. Hardesty back.
 22 JUDGE CHAPPELL: It's all right with me. If we
 23 don't finish Thursday, we'll go into next week.
 24 MR. M. NICHOLS: I'm just trying to let you know
 25 for scheduling purposes.