

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)

NORTH CAROLINA BOARD OF)
DENTAL EXAMINERS,)

Respondent.)
_____)

PUBLIC

Docket No. 9343

**COMPLAINT COUNSEL'S EXPEDITED MOTION TO PLACE *IN CAMERA*
TESTIMONY ON THE PUBLIC RECORD**

Until Brian Runsick testified on the 9th day of the trial, certain testimony relating to Dr. Tilley's examination of Mr. Runsick was taken *in camera*. While on the stand, Mr. Runsick affirmatively testified that he wanted this information in the public record. Complaint Counsel has consulted with Respondent's Counsel, and represents that Respondent's Counsel do not object to this motion. Respondent's assent is particularly noteworthy here because the initial *in camera* designation was made at Respondent's Counsel's request. Consequently, Complaint Counsel respectfully request that the *in camera* designation be removed from portions of the testimony of Drs. Giniger and Tilley.

The testimony at issue was granted *in camera* treatment because it related to a medical examination of Mr. Runsick and because Respondent's Counsel had not been able to reach Mr. Runsick to ascertain whether he would waive confidentiality regarding such information. *See, e.g.,* Giniger, Tr. 265:25-266:03. As a result, the following portions of the trial transcript were heard *in camera*:

Dr. Giniger: Giniger, Tr. 266:16 to 279:22, and 470:07 to 501:25; and

Dr. Tilley: Tilley, Tr. 2008:02 to 2049:21, and 2071:15 to 2099:15.

The *in camera* portions of the testimony of Drs. Giniger and Tilley should be placed on the public record because Mr. Runsick has on repeated occasions either affirmatively or effectively waived confidentiality with respect to the subject matter of this testimony.

First, when Mr. Runsick lodged his complaint with the Dental Board on April 11, 2008, he executed a notarized “Medical/Dental Records Release Authorization and Certification.” CX0055-004.

Second, on December 20, 2010, Complaint Counsel, in accordance with the Scheduling Order entered herein on July 15, 2010, mailed a notice under Rule 3.45(b), 16 U.S.C. § 3.45(d), to Mr. Runsick advising him that his deposition (CX0579) would be admitted into evidence in the public record of these proceedings sometime after the trial commenced on February 17, 2011, unless an order was obtained from the Court conferring *in camera*, or other confidential status pursuant to Rules 3.45 or 4.10(g); the deadline for seeking such treatment was January 7, 2011. A copy of the letter to Mr. Runsick is attached hereto as Exhibit 1. No motion for *in camera* or other confidential treatment for Mr. Runsick’s deposition was filed.

Third, and most importantly, Mr. Runsick affirmatively waived confidential treatment when he testified in this matter at trial. Mr. Runsick testified “I want it public.” And when asked if he “wish[ed] this part to be in camera or a part of the public record,” he responded “It’s fine. It can be public record.” Runsick, Tr. 2131.

An Order granting this motion will serve the public interest by making more of this proceeding open to the public, both as part of the transcript and as part of the post trial submissions. If granted on an expedited basis, the Order will also have the benefit of eliminating

the need to file *in camera* versions of post-trial submissions, followed by public versions, followed by revised public versions.

Respectfully submitted,

s/ Richard B. Dagen
Richard B. Dagen
William L. Lanning
Laurel A. Price
Counsel Supporting Complaint
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, NW
Washington, DC 20580
(202) 326-2628

Dated: April 1, 2011

EXHIBIT 1



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition

December 20, 2010

Via Federal Express

Brian Keith Runsick
2501 South Ocean Drive
Penthouse 36
Hollywood, FL 33019

RE: *Re: In the Matter of North Carolina [State] Board of
Dental Examiners, Federal Trade Commission Docket
No. 9343*

Dear Mr. Runsick:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intend to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. The administrative trial is scheduled to begin on February 17, 2011. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge D. Michael Chappell.

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45, 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004).

Please be aware that under the current Scheduling Order dated July 15, 2010, the deadline for filing motions seeking *in camera* status is January 7, 2011.

If you have any questions, please feel free to contact me at (202) 326-3361.

Sincerely,

A handwritten signature in black ink, appearing to read "William Lanning". The signature is fluid and cursive, with a large, sweeping flourish at the end.

William Lanning
Counsel Supporting the Complaint

cc: Richard B. Dagen
Melissa Westman-Cherry

Attachment A

In the Matter of NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS, Docket No. 9343
List of Brian Runsick Documents Marked As Exhibits by Complaint Counsel

Exhibit No.	Bates Range	Date	Description
CX0579	N/A	11/4/2010	Designated Deposition Transcript of Brian Runsick

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

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

**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL’S EXPEDITED
MOTION TO PLACE *IN CAMERA* TESTIMONY ON THE PUBLIC RECORD**

On April 1, 2011, Complaint Counsel filed its unopposed motion to move the *in camera* portions of the testimony of Drs. Giniger and Tilley to the public record of this matter. The *in camera* testimony concerns a dental examination done by Dr. Tilley of Mr. Brian Runsick. During his subsequent testimony in this matter, Mr. Runsick affirmatively stated that the testimony and information relating to Dr. Tilley’s examination of Mr. Runsick should be on the public record. Runsick, Tr. 2131. Accordingly, Complaint Counsel’s motion to move the *in camera* portions of the testimony of Drs. Giniger and Tilley to the public record is GRANTED.

ORDERED:

D. Michael Chappell
Chief, Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2011, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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

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

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

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

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

*Counsel for Respondent
North Carolina State Board of Dental Examiners*

CERTIFICATE FOR ELECTRONIC FILING

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

April 1, 2011

By: s/ Richard B. Dagen
Richard B. Dagen