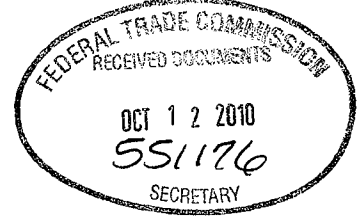


**ORIGINAL**



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

In the Matter of	)	<b>PUBLIC</b>
	)	
NORTH CAROLINA STATE BOARD OF	)	DOCKET NO. 9343
DENTAL EXAMINERS,	)	
	)	
Respondent.	)	

**COMPLAINT COUNSEL'S FIRST SET OF REQUESTS FOR ADMISSION TO  
RESPONDENT NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS (1-44)**

Pursuant to Rule 3.32 of the Federal Trade Commission's Rules of Practice, Complaint Counsel hereby requests that Respondent North Carolina State Board of Dental Examiners ("Dental Board") admit the truth of the following statements or opinions of fact within 10 days from the date of service thereof.

1. Admit that the Dental Board is a legal entity and is not a bank, savings and loans institution, common carrier, air carrier, or agricultural cooperative.
2. Admit that a relevant market in which to assess the competitive effects of the Dental Board's conduct with respect to the provision of teeth whitening services by non-dentists is North Carolina or smaller communities therein.
3. Admit that the relevant market in which to assess the competitive effects of the Dental Board's conduct with respect to the provision of teeth whitening services by non-dentists includes dentists that provide teeth whitening services.
4. Admit that a Dental Board member is not obligated to disclose to the North Carolina State Ethics Commission whether that member derives income from providing teeth whitening services, and that no Dental Board member has made any such disclosure.
5. Admit that no member of the Dental Board has ever been recused from an investigation or adjudication of a non-dentist providing teeth whitening services on the basis that that Dental Board member derives income from providing teeth whitening services.
6. Admit that the Dental Board has closed one or more investigations relating to the unlicensed practice of dentistry involving non-dentists providing teeth whitening services because the Dental Board concluded that the non-dentist(s) neither made an impression of customers' teeth or gums nor touched customers' mouth, teeth, or gums.

7. Admit that one or more members of the Dental Board have, at some time during his or her Dental Board tenure, believed that the provision of teeth whitening services by non-dentists did not constitute the unlicensed practice of dentistry unless the non-dentist either made an impression of customers' teeth or gums or touched the customers' mouth, teeth, or gums.
8. Admit that a non-dentist selling teeth whitening product(s) for use in that non-dentist's commercial establishment, without more, does not constitute the unlawful practice of dentistry in North Carolina.
9. Admit that a non-dentist selling teeth whitening product(s) for use in that non-dentist's commercial establishment, and reading to a consumer the pre-packed instructions for the teeth whitening product(s), without more, does not constitute the unlawful practice of dentistry in North Carolina.
10. Admit that a non-dentist selling teeth whitening product(s) for use in that non-dentist's commercial establishment, reading to a consumer the pre-packed instructions for the teeth whitening product(s), and applying carbamide peroxide or hydrogen peroxide to a pre-fabricated mouthpiece that the consumer removes from the package and then inserts into his or her mouth, without more, does not constitute the unlawful practice of dentistry in North Carolina.
11. Admit that a non-dentist selling teeth whitening product(s) for use in that non-dentist's commercial establishment, and answering questions about teeth whitening product(s) and its use, without more, does not constitute the unlawful practice of dentistry in North Carolina.
12. Admit that the Dental Board has not considered or proposed adopting a regulation that in North Carolina, teeth whitening services can only be performed by a licensed dentist, or persons under the direct supervision of a licensed dentist.
13. Admit that no official or agency of the state of North Carolina, including the Legislature or Executive, has overruled, countermanded, or amended a decision by the Dental Board with respect to the unauthorized practice of dentistry.
14. Admit that no official or agency of the state of North Carolina, including the Legislature or Executive, has sought information about a decision by the Dental Board with respect to the provision of teeth whitening services.
15. Admit that no official or agency of the state of North Carolina, including the Legislature or Executive, has and exercises power to review and disapprove of particular decisions of the Dental Board with respect to who is engaged in the unlawful practice of dentistry through the provision of teeth whitening services.

16. Admit that with respect to the Dental Board's actions concerning the provision of non-dental teeth whitening services, no outside North Carolina state official or agency has ascertained the relevant facts, examined the substantive merits of a Dental Board's action, and assessed whether the Dental Board's action comports with the underlying statutory criteria established by the North Carolina Legislature in a way sufficient to establish the challenged conduct is a product of deliberate state intervention rather than private choice.
17. Admit that the actions of the Dental Board have prevented or deterred non-dentists from providing or expanding teeth whitening services in North Carolina.
18. Admit that the Dental Board initiated no more than three investigations with respect to the provision of non-dental teeth whitening services based on complaints of actual consumer harm.
19. Admit that the subpoena returns provided in response to subpoenas from Complaint Counsel in this matter fairly and accurately summarize the revenues these dentists obtained from the provision of teeth whitening services, the number of patients obtaining teeth whitening services, and the total number of their patients over the reporting period.
20. Admit that the Dental Board learned in 2008 that the Attorney General of North Carolina did not believe that the provision of teeth whitening services by non-dentists constituted the unlawful practice of dentistry.
21. Admit that the Dental Board is not aware of any study showing that dental teeth whitening is safer than teeth whitening provided at a mall or salon.
22. Admit that there has been no decision on the merits in a North Carolina court relating to the Dental Board's enforcement of the Dental Practices Act with respect to non-dental teeth whitening.
23. Admit that the Dental Board is not aware of any consumer harm caused by the "salon make up artist" who made "impressions of teeth in violation of N.C. Gen. Stat. §90-29(b)(7)" as referenced paragraph 18 of the Dental Board's Response.
24. Admit that the Dental Board is not aware of any consumer harm caused by the "salon brochure" that "claimed that the teeth whitening solution penetrated to the interior of the teeth and that the stains would not reappear" as referenced paragraph 18 of the Dental Board's Response.
25. Admit that the Dental Board is not aware of any consumer harm caused by the provision of teeth whitening services from the "employee who formerly worked as a dental assistant" as referenced paragraph 18 of the Dental Board's Response.

26. Admit that the Dental Board is not aware of any consumer harm caused by the “spa employees” who directly applied hydrogen peroxide gel and shined an LED light on the consumer’s teeth as referenced paragraph 18 of the Dental Board’s Response.
27. Admit that the Dental Board is not aware of any consumer harm caused by the “spa employees” that “loosen stains or bacteria prior to the whitening procedure” as referenced paragraph 18 of the Dental Board’s Response.
28. Admit that the Dental Board is not aware of any consumer harm caused by the salon operator that provided teeth whitening services, “in the form of whitening substance being painted on the customer’s teeth and activated by a light,” as referenced paragraph 18 of the Dental Board’s Response.
29. Admit that the Dental Board is unaware of any complaint by a consumer of non-dental teeth whitening services to the Dental Board or any other consumer protection agency in North Carolina alleging that he or she believed, or was led to believe, that the services were being provided by a dentist.
30. Admit that consumers of services from dentists licensed in North Carolina who complained to the Dental Board suffered injuries or harm requiring treatment by another dentist licensed in North Carolina.
31. Admit that consumers of services from dentists licensed in North Carolina who complained to the Dental Board suffered non-transitory injuries to teeth or gums requiring treatment by another dentist licensed in North Carolina. “Non-transitory” as used herein means any injury or harm that did not cease within 48 hours of the act(s) that caused said injury.
32. Admit that the Dental Board has received complaints about the unsanitary practices of dentists licensed in North Carolina providing teeth whitening services.
33. Admit that the Dental Board has concluded on multiple occasions that a licensed dentist in North Carolina has used unsanitary practices.
34. Admit that consumers of services from dentists licensed in North Carolina have been injured due to that dentist’s inadequate care or failure to use reasonable care.
35. Admit that all Minutes of the meetings of the Dental Board other than Minutes denominated Closed Board Meeting Minutes are or were available to the public without redaction.

36. Admit that respect to investigations of the provision of teeth whitening by non-dentists, the case officer acts on behalf of the Dental Board and sending cease and desist letters is within the case officer's authority.
37. Admit that with respect to the provision of teeth whitening services by non-dentists, the Dental Board has not asked any official or agency of the state of North Carolina, including the Legislature or Executive, to regulate the strength of the teeth whitening materials, training of the non-dentists, or sanitary conditions under which the services are provided.
38. Admit that the Dental Board is unaware of any empirical data or studies showing that the provision of teeth whitening services by non-dentists is more likely to lead to patient health issues than that provided by dentists.
39. Admit that the Board is unaware of any empirical data or studies showing that the provision of teeth whitening services by non-dentists is more likely to lead to public safety issues than that provided by dentists.
40. Admit that some persons who cannot obtain teeth whitening services because mall and salon operations have closed due to Dental Board action will obtain teeth whitening services will seek dental teeth whitening services from licensed North Carolina dentists.
41. Admit that some persons who cannot obtain teeth whitening services because mall and salon operations have closed due to Dental Board action will not obtain teeth whitening services.
42. Admit that the Dental Board will not permit practicing dental hygienists licensed in North Carolina to engage in teeth whitening without the direct supervision of a dentist.
43. Admit that dental insurance does not cover teeth whitening procedures because the procedure is classified as a cosmetic procedure.
44. Admit that there has not been any discussion at a public Dental Board meeting as to whether to send a cease and desist order or letter to non-dentists providing teeth whitening services.

## INSTRUCTIONS

- A. Provide separate and complete sworn responses for each Request for Admission (“Request”).
- B. The Request will be deemed admitted unless, within ten days of service of this request, You serve a sworn written answer to the Request.
- C. Your answer should specifically admit or deny the Request or set forth in detail the reasons why You cannot truthfully admit or deny it after exercising due diligence to secure the information necessary to make full and complete answers, including a description of all efforts You made to obtain the information necessary to answer the Request fully.
- D. When good faith requires that You qualify Your answer or deny only a part of the matter of which an admission is requested, specify the portion that is true and qualify or deny the remainder.
- E. If You consider that a matter of which an admission has been requested presents a genuine issue for trial, You may not, on that ground alone, object to the request. Instead, You must deny the matter or set forth reasons why You cannot admit or deny it.
- F. Answer each Request fully and completely based on the information and knowledge currently available to You, regardless of whether You intend to supplement Your response upon the completion of discovery.
- G. Your answers to any Request herein must include all information within Your possession, custody or control, including information reasonably available to You and Your agents, attorneys, or representatives. You may not give lack of information or knowledge as a reason for failure to admit or deny unless You state that You have made reasonable inquiry and that the information known or readily obtainable by You is insufficient to enable You to admit or deny the matter.
- H. If in answering any of the Request You claim any ambiguity in either the Request or any applicable definition or instruction, identify in Your response the language You consider ambiguous and state the interpretation You are using in responding.
- I. Each Request herein is continuing and requires prompt amendment of any prior response if You learn, after acquiring additional information or otherwise, that the response is in some material respect incomplete or incorrect. *See* 16 C.F.R. § 3.31(e).

- J. If You object to any Request or any portion of any Request on the ground that it requests information that is privileged (including the attorney-client privilege) or falls within the attorney work product doctrine, state the nature of the privilege or doctrine You claim and provide all other information as required by 16 C.F.R. § 3.38A.
- K. For each natural person You refer to in Your answers, state (a) that person's full name; (b) the person's last known business address and business phone number, or where that person's business address and phone number is unavailable, that person's home address and home phone number; (c) the person's business affiliation and title during the time period of the matter at issue; and (d) the person's current business affiliation and title.

## DEFINITIONS

- A. "Dental Board" shall mean the North Carolina State Board of Dental Examiners, including without limitation all of its locations, and all its predecessors, divisions, committees, subcommittees, councils, working groups, advisory groups, members, officers, employees, consultants, agents, representatives, and others acting on its behalf.
- B. "Dental Board's Response" shall mean the Response to the Complaint filed by the North Carolina State Board of Dental Examiners on July 7, 2010.
- C. "Concerning" means relating to, alluding to, referring to, constituting, describing, discussing, evidencing, or regarding.
- D. "Each" means and includes "each and every," "all" means and includes "any and all," and "any" means and includes "any and all."
- E. "North Carolina Dental Society" mean the North Carolina Dental Society, its officers, directors, trustees, employees, attorneys, agents, consultants, members, representatives, committees, subcommittees, chapters, affiliates, subdivisions, councils, or other organizational units.
- F. "North Carolina State Ethics Commission" including without limitation all of its locations, and all its predecessors, divisions, committees, subcommittees, councils, working groups, advisory groups, members, officers, employees, consultants, agents, representatives, and others acting on its behalf.
- G. "Person" means and includes any natural person or any business, legal or governmental entity or association and the officers, directors, employees, agents, consultants and attorneys thereof.
- H. "Regarding" means and includes affecting, concerning, constituting, dealing with, describing, embodying, evidencing, identifying, involving, providing a basis for, reflecting, relating to, respecting, stating, or in any manner whatsoever pertaining to that subject.



**CERTIFICATION**

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Requests for Admission has been prepared by me or under my personal supervision from records of the North Carolina State Board of Dental Examiners, and is complete and correct to the best of my knowledge and belief.

\_\_\_\_\_  
(Signature of Official)

\_\_\_\_\_  
(Title/Company)

\_\_\_\_\_  
(Typed Name of Above Official)

\_\_\_\_\_  
(Office Telephone)

Dated: October 12, 2010

Respectfully submitted,

s/ William L. Lanning  
Richard B. Dagen  
William L. Lanning  
Melissa Westman-Cherry

*Counsel Supporting the Complaint*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 12, 2010, 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-159  
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-113  
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.

October 12, 2010

By: s/ William L. Lanning  
William L. Lanning