

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

**COMMISSIONERS:**       **Jon Leibowitz, Chairman**  
                                  **William E. Kovacic**  
                                  **J. Thomas Rosch**  
                                  **Edith Ramirez**  
                                  **Julie Brill**

<p><b>In the Matter of</b></p> <p><b>THE NORTH CAROLINA BOARD OF DENTAL EXAMINERS</b></p>
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**DOCKET NO. 9343**

**ORDER DENYING MOTION FOR STAY OF PROCEEDING**

On November 2, 2010, Complaint Counsel filed a Motion For Partial Summary Decision in this matter, and on November 3, 2010, Respondent filed a Motion To Dismiss. On November 3, 2010, Respondent also filed a Motion For Stay of the Proceeding “until the Motion to Dismiss has been determined on the merits. . . .” (“Motion For Stay” at 1), and on November 5, 2010, Complaint Counsel filed a Response to that Motion advising that Complaint Counsel does not oppose the Motion For Stay. The Commission has issued an Order granting the parties’ Joint Motion For Extension of Time, pursuant to which responses to the dispositive Motions will be due on November 30, 2010, and replies to those responses will be due on December 10, 2010. As the Commission stated in that Order, the Joint Motion has been granted in order to ensure that the parties can fully address all relevant issues arising from the dispositive Motions in their respective filings.

The Commission has determined not to stay the proceedings before the Chief Administrative Law Judge in this matter while it considers the Motion To Dismiss and the Motion For Partial Summary Decision. Commission Rule 3.22(b) provides:

A motion under consideration by the Commission shall not stay proceedings before the Administrative Law Judge unless the Commission so orders.<sup>1</sup>

When the Commission proposed to amend the Commission Rules governing Commission adjudicative proceedings in 2008, it noted:

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<sup>1</sup> 16 C.F.R. § 3.22(b) (2010).

Rules 3.22 and 3.24 [if amended as proposed] would provide authority to the Commission to decide in the first instance all dispositive prehearing motions, including motions for summary decision, unless it refers the motion to the ALJ, while at the same time ensuring that the underlying proceedings are not stayed pending resolution of the dispositive motion absent a Commission order.<sup>2</sup>

The Commission reaffirmed the validity of that approach when it promulgated the final current version of Commission Rule 3.22(b):

The purpose of proposed paragraph [3.22](b) was to ensure that discovery and other prehearing proceedings continue while the Commission deliberates over the dispositive motions. . . .<sup>3</sup>

For similar reasons, the Commission has declined to stay administrative adjudicative proceedings pending the outcome of corollary federal court actions seeking preliminary injunctive relief, based on the concern that staying the administrative proceedings would delay ultimate resolution of the cases at issue.<sup>4</sup> That same concern is present here, and the parties have given us no reason to depart from our preference to move Part 3 matters expeditiously. Accordingly,

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<sup>2</sup> *Federal Trade Commission, 16 CFR Parts 3 and 4: Rules of Practice: Proposed Rule Amendments and Request For Public Comment*, 73 Fed. Reg. 58832, 58834 (October 7, 2008); *see also id.* at 58836 (“The Commission anticipates that new paragraphs [3.22](b) and (e) would expedite cases by providing that proceedings before the ALJ will not be stayed while the Commission considers a motion, unless the Commission orders otherwise . . .”).

<sup>3</sup> *Federal Trade Commission, 16 CFR Parts 3 and 4: Rules of Practice: Interim Final Rules With Request For Comment*, 74 Fed. Reg. 1804, 1810 (January 13, 2009), *adopted as final*, 74 Fed. Reg. 20205 (May 1, 2009). The amendments thus effected govern all Commission adjudicatory proceedings commenced after January 13, 2009, such as this proceeding. *See* 74 Fed. Reg. at 1804.

<sup>4</sup> *See, e.g., In the Matter of Whole Foods Market, Inc., Docket No. 9324* (Order Amending Scheduling Order and Denying Respondent’s Motion To Stay Proceedings, Issued December 19, 2008 (<http://www.ftc.gov/os/adjpro/d9324/12192008orderamending.pdf>)); *In the Matter of Inova Health System Foundation, et al., Docket No. 9326* (Order Denying Respondents’ Motion To Stay Administrative Proceedings, Issued May 29, 2008 by Commissioner Rosch) (<http://www.ftc.gov/os/adjpro/d9326/080530orderdenying.pdf>). Although the Commission did determine to stay the proceedings in *In the Matter of South Carolina State Board of Dentistry, Docket No. 9311*, pending its resolution of Respondent’s Motion To Dismiss (Order Granting Respondent’s Unopposed Motion To Stay Discovery, Issued October 23, 2003) (<http://www.ftc.gov/os/adjpro/d9311/031023ordgrntrespmotostaydiscov.pdf>), that Order was issued several years before the Commission promulgated the current version of Commission Rule 3.22.

**IT IS ORDERED THAT** Respondent's Motion For Stay of the Proceeding be, and it hereby is, denied.

By the Commission, Commissioner Brill recused.

Donald S. Clark  
Secretary

SEAL:  
ISSUED: November 15, 2010