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## FTC Denies North Carolina Dental Board's Motion to Dismiss Allegations That it Stifled Competition for Teeth-Whitening Services

### Commission Finds That Board's Conduct is Not Protected by the State Action Doctrine

FOR RELEASE

February 8, 2011

**TAGS:** [Health Care](#) | [Competition](#)

The Federal Trade Commission denied a motion by the North Carolina State Board of Dental Examiners to dismiss a complaint filed by the FTC's staff which charges that the Dental Board stifled competition by blocking non-dentists from providing teeth-whitening services.

The Commission issued an [Opinion](#) and [Order](#) unanimously rejecting the Dental Board's argument that the "state action doctrine" exempts it from antitrust scrutiny under the FTC Act. The state action doctrine exempts from antitrust liability conduct by private actors if their conduct is pursuant to a clearly articulated state policy to displace competition and if that conduct is supervised by the state. Because of the ruling, the case against the Dental Board will move forward as scheduled, with a hearing before an Administrative Law Judge on February 17, 2011.

The Commission wrote that "because the Board is controlled by practicing dentists, the Board's challenged conduct must be actively supervised by the state for it to claim state action exemption from the antitrust laws. Because we find no such supervision, we hold that the antitrust laws reach the Board's conduct." The Dental Board consists of eight members, including six licensed dentists, that regulate the practice of dentistry in North Carolina.

FTC's staff [sued](#) the Dental Board in June 2010, alleging that the state regulatory agency violated federal law by blocking non-dentists from providing teeth-whitening services.

The Board filed a motion in November 2010 seeking to dismiss the FTC's charges based on the state action doctrine. At the same time, complaint counsel filed a motion for partial summary decision, asking the Commission to rule that the state action defense was unavailable to the Dental Board. The Commission

considered these motions together under the FTC's revised Rules of Practice. In its Opinion, the Commission concluded that the state action doctrine did not exempt the Dental Board from antitrust scrutiny, and granted complaint counsel's motion for partial summary decision.

The Commission vote approving the Opinion and Order was 4-0, with Commissioner Julie Brill recused. More information on the FTC's complaint against the Dental Board can be found [here](#).

The FTC's Bureau of Competition works with the Bureau of Economics to investigate alleged anticompetitive business practices and, when appropriate, recommends that the Commission take law enforcement action. To inform the Bureau about particular business practices, call 202-326-3300, send an e-mail to [antitrust@ftc.gov](mailto:antitrust@ftc.gov), or write to the Office of Policy and Coordination, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, DC 20580. To learn more about the Bureau of Competition, read "Competition Counts" at <http://www.ftc.gov/competitioncounts>.

(FTC Docket No. 9343)

(NC Dental Order.final.wpd)

## CONTACT INFORMATION

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[North Carolina Board of Dental Examiners, The, In the Matter of](#)

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