UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman

Mozelle W. Thompson

Orson Swindle Thomas B. Leary Pamela Jones Harbour

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In the Matter of)	
)	
SOUTH CAROLINA STATE BOARD OF DENTISTRY)	Docket No. 9311
)	
)	

JOINT MOTION TO ADMIT TWO NEW DOCUMENTS INTO THE RECORD

Complaint counsel and respondent South Carolina State Board of Dentistry ("Board") jointly move that the Commission include in the record excerpts from two documents in connection with the Board's motion to dismiss: (1) Excerpt from Transcript of Hearing in *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, Civ. A. No. 01-CP-0-3148 (S.C. Ct. Com. Pl. Aug. 9, 2001) ("Hearing Transcript") [Exhibit 14]; (2) Excerpt from the State Action Analysis of the Promulgation of Emergency Regulation 39-18 by the South Carolina State Board of Dentistry, *submitted on* July 23, 2003 to complaint counsel ("White Paper") [Tab 19].

Both documents are items of which the Commission may properly take official notice and therefore consider on a motion to dismiss. The Commission may take official notice of a transcript, such as the Hearing Transcript, that is a public record. *Locicero v. Leslie*, 948 F. Supp. 10, 12 (D. Mass. 1996); *see also Zdrok v. V Secret Catalogue, Inc.*, 215 F. Supp. 2d 510, 513-14 (D.N.J. 2002). The Commission also may take official notice of briefs, like the White Paper, not for the truth of the matter asserted, but for the position a party has taken. 5A Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure* §§ 1364, 1366 (2d ed. 1990);

Southmark Prime Plus L.P. v. Falzone, 776 F. Supp. 888, 892 (D. Del. 1991).

In order for the record to be clear, the Hearing Transcript was not provided to complaint counsel during the pre-complaint investigation, and complaint counsel saw this excerpt for the first time on January 7, 2003 and the entire transcript on January 8, 2003.

Complaint counsel and the Board respectfully request that the Hearing Transcript and the White Paper be included in the record.

Dated: January 9, 2004	
By: Michael B. Kades, Esq. Federal Trade Commission 601 New Jersey Avenue, NW Room 7225 Washington, DC 20001	By: Kenneth P. Woodington, Esq. 1611 Devonshire Drive, 2 nd Floor P.O. Box 8568 Columbia, SC 29202
Complaint Counsel	Counsel for South Carolina State Board of Dentistry
SO ORDERED:	
Donald S. Clark	

Secretary

CERTIFICATE OF SERVICE

I, Andrew S. Ginsburg, hereby certify that on January 9, 2004:

I caused one original and twelve copies of the Joint Motion to Admit Two New Documents Into the Record to be served by hand delivery, and one copy to be served by electronic mail, upon the following-

Office of the Secretary

Federal Trade Commission - Room 159

600 Pennsylvania Avenue, N.W.

Washington, D.C. 20580

I caused a copy of the Joint Motion to Admit Two New Documents Into the Record to be served by facsimile and U.S. mail upon the following-

Kenneth P. Woodington, Esq.

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P.O. Box 8568

Columbia, S.C. 29202

Andrew S. Ginsburg