UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:	Timothy J. Muris, C Mozelle W. Thompso Orson Swindle Thomas B. Leary Pamela Jones Harbo	Thompson dle Leary	
In the Matter of			
SOUTH CAROLINA ST BOARD OF DENTISTR) Docket No. 9311	
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ORDER DENYING MOTION TO DISMISS ON STATE ACTION GROUNDS, HOLDING IN ABEYANCE MOTION TO DISMISS ON MOOTNESS GROUNDS, RETAINING JURISDICTION, AND REFERRING MOOTNESS ISSUES TO AN ADMINISTRATIVE LAW JUDGE

Respondent South Carolina State Board of Dentistry has filed a Motion to Dismiss the Complaint in this matter, based on two grounds. First, Respondent argues that the acts that are the subject of the Complaint are exempt from federal antitrust liability under the state action doctrine. Second, Respondent argues that this case is moot because it has discontinued the challenged acts and because those acts are now barred by the 2003 amendments to state law.

The Commission has considered the Motion to Dismiss, as well as Respondent's and Complaint Counsel's briefs and oral arguments in support of and in opposition to the Motion to Dismiss. For the reasons stated in the accompanying Opinion, the Commission has determined: to deny Respondent's Motion to Dismiss on state action grounds; to hold in abeyance Respondent's Motion to Dismiss on mootness grounds; to retain jurisdiction; and to refer the mootness issues raised by Respondent's Motion to Dismiss to Chief Administrative Law Judge Stephen J. McGuire or his designee to conduct a limited inquiry and the preparation of an initial decision on the issue of whether there is a reasonable likelihood that the conduct challenged by the Complaint will recur. Accordingly,

IT IS ORDERED THAT Respondent's Motion to Dismiss on state action grounds be, and it hereby is, denied;

IT IS FURTHER ORDERED THAT Respondent's Motion to Dismiss on mootness grounds be, and it hereby is, held in abeyance;

IT IS FURTHER ORDERED THAT the Commission shall retain jurisdiction of this matter, pursuant to Commission Rule 3.42(a), 16 C.F.R. § 3.42(a); and

IT IS FURTHER ORDERED THAT the mootness issues raised by Respondent's Motion to Dismiss be, and they hereby are, referred to Chief Administrative Law Judge Stephen J. McGuire or his designee for further proceedings in accordance with the accompanying Opinion, including in particular (1) the conduct of limited discovery, for a period not to exceed ninety (90) days from the date of issuance of this Order; and (2) the preparation of findings of fact and an initial decision addressing the likelihood that the Respondent may engage in future unlawful conduct under the 2003 South Carolina statute. For purposes of this proceeding, the deadline for filing the initial decision shall be determined and if necessary extended as prescribed by Commission Rule 3.51(a), 16 C.F.R. § 3.51(a), except that the deadline shall in no event be any earlier than January 31, 2005.

By the Commission.

Donald S. Clark Secretary

SEAL

ISSUED: July 28, 2004