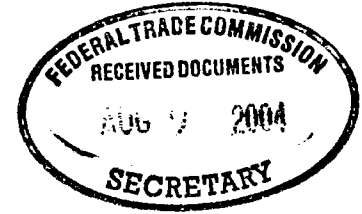


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
SOUTH CAROLINA STATE BOARD OF DENTISTRY)
)
Respondent.)
)

Docket No. 9311

ORDER SETTING DISCOVERY DEADLINES AND BRIEFING SCHEDULE

I.

The Complaint in this matter was issued by the Commission on September 12, 2003. In the Complaint, the Commission stated: “[p]ending further order of the Commission, the Commission will retain adjudicative responsibility for this matter.” Complaint at 7.

On October 21, 2003, Respondent filed with the Commission a motion to dismiss based on state action immunity and based on mootness. On July 28, 2004, the Commission issued its 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. In that Order, the Commission directed “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.” Order at 1. In the Opinion and Order of the Commission, the Commission “refer[red] this matter to the administrative law judge for limited discovery for ninety (90) days and an initial assessment of the likelihood that the Board may engage in future unlawful conduct under the 2003 statute.” Opinion at 36. The Commission further directed:

In particular, the Commission requests that the administrative law judge make findings of fact and resolve the context and significance of the Board’s March 2003 meeting and the Board’s October 2003 Resolution. We leave to the administrative law judge’s discretion whether to hold a hearing or to request a briefing to assist the Commission in resolving the Board’s mootness defense. Apart from this limited referral, we retain jurisdiction over this matter.

Opinion at 36.

II.

In accordance with the directive of the Commission and upon review of the issues to be adjudicated, it is determined that discovery will be limited as set forth below and that an evidentiary hearing will not be necessary at this stage in the proceeding.

A.

The parties are hereby ordered to conduct limited discovery. In accordance with the directive of the Commission, discovery shall be limited to only “the issue of whether the challenged conduct is likely to recur.” Opinion at 32.

Rule 3.31(a) of the Commission’s Rules of Practice, authorizes Administrative Law Judges to limit the frequency of discovery methods. 16 C.F.R. § 3.31(a). In accordance with Rule 3.31(a) and the directive of the Commission, discovery is limited as follows:

depositions upon oral examination or written questions shall be limited to ten depositions per party;

subpoenas *duces tecum* and prehearing subpoenas *ad testificandum* shall be limited to five per party; and

written interrogatories, requests for production of documents, and requests for admission shall be limited to ten per party.

There shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. There is no limit to the number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits.

Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off, that all responses and objections will be due on or before that date. Any motion to compel responses to discovery requests shall be filed within 5 days of impasse if the parties are negotiating in good faith and are not able to resolve their dispute.

The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. Counsel scheduling depositions shall immediately notify all other counsel that a deposition has been scheduled.

Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to

the opposing party within five business days of receiving the documents.

Under Rule 702 of the Federal Rules of Evidence, expert testimony is allowed from a witness qualified as an expert by knowledge, skill, experience, training, or education, “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.” F.R.E. 702. The Court has determined that scientific, technical, or other specialized knowledge would not assist in resolving “the issue of whether the challenged conduct is likely to recur.” Accordingly, no expert discovery or testimony will be allowed.

Based on the limited scope of discovery, the parties shall have until September 24, 2004 to complete discovery.


B.

Having been determined that a hearing is not necessary at this stage in proceedings, the parties shall provide briefs and proposed findings of fact only on “the issue of whether the challenged conduct is likely to recur.” Briefs shall be supported with affidavits and supporting evidence. Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. 16 C.F.R. § 3.24(a)(3). Proposed findings of fact shall contain references to supporting material.

The parties have until October 20, 2004 to file briefs, proposed findings of fact, and attachments thereto.

The parties have until November 3, 2004 to file reply briefs and reply findings of fact.

ORDERED:


Stephen J. McGuire
Chief Administrative Law Judge

Date: August 9, 2004