

Interlocutory Orders, Etc.

THE NORTH CAROLINA BOARD OF DENTAL EXAMINERS

Docket No. 9343. Order, March 7, 2011

Order denying respondent's request for an order requiring complaint counsel to disclose each individual attorney's duties and states of licensure.

OPINION DENYING RESPONDENT'S APPLICATION FOR REVIEW TO
THE COMMISSION OF THE ADMINISTRATIVE LAW JUDGE'S RULING
DENYING RESPONDENT'S MOTION FOR DISCLOSURE

On February 14, 2011, the Administrative Law Judge (ALJ) in this case issued an Order Denying Respondent's Motion for Disclosure. That motion sought an order requiring Complaint Counsel to provide Respondent with information regarding the duties and states of licensure of the individual attorneys designated as Complaint Counsel. On March 1, 2011, the ALJ denied Respondent's application for interlocutory Commission review of the ALJ's February 14 Order. On March 3, 2011, Respondent filed an Application for Review to the Commission of the Administrative Law Judge's Ruling Denying Respondent's Motion for Disclosure -- citing Commission Rule 3.23(b), 16 C.F.R. § 3.23(b) as the basis for that application -- and on March 4, 2011, Complaint Counsel filed their Opposition to that Application.

As Complaint Counsel point out, the Commission has consistently declined to entertain interlocutory appeals from routine discovery rulings in any given matter pending before an ALJ¹. To that end, Commission Rule 3.23(b) permits interlocutory appeals to the Commission from ALJ rulings only if (1) the ALJ *fails to rule* on an application to take an interlocutory appeal or (2) the ALJ *grants* the application to take an interlocutory appeal. 16 C.F.R. § 3.23(b). In this case, the ALJ issued a timely Order denying Respondent's

¹ Complaint Counsel Opposition at 3 (Proposed Order), *citing In the Matter of Bristol-Myers Co., et al., American Home Products Corporation, et al., and Sterling Drug, Inc., et al.*, 90 F.T.C. 273 (1977) (Interlocutory Order).

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application to take an interlocutory appeal. No interlocutory appeal to the Commission therefore may be taken.² Accordingly,

IT IS ORDERED THAT Respondent's Application for Review to the Commission of the Administrative Law Judge's Ruling Denying Respondent's Motion for Disclosure be, and it hereby is, **DENIED**.

By the Commission, Commissioner Brill recused.

² On February 9, 2011, the Commission issued an Order which in relevant part denied Respondent's application for Commission review of an earlier ALJ Order denying Respondent's Motion to Compel. In the February 9 Order, the Commission apprised Respondent of the circumstances under which an interlocutory appeal to the Commission from an ALJ decision may be taken. February 9 Order at 2.