

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

FEDERAL TRADE COMMISSION

3.22(c). "Reply papers should be the exception and not the rule." See *United States v. Int'l Bus. Machines Corp.*, 66 F.R.D. 383, 384 (S.D.N.Y. 1975). The Southern District of New York observed that "clearly, nothing but delay, unnecessary work, and unwarranted expense can

Q. I'm asking you what your involvement was in the study?

A. I was a colleague and I participated in the research with him. I saw

and I helped him prepare the manuscript, manuscripts, several.

Q. So you were privy to all the data?

rarely see all the data in any study, except

the paper.

Deposition at 455 attached as Exhibit D to *Opposition*. Complaint Counsel's statement is consistent with this testimony and even mirrors the very language used by Respondents in their questioning.

In a similar vein, Respondents' "correction" of the record regarding the retraction of the

Respondents assert the right to call a new expert and reopen

at [REDACTED] the medical malpractice defendant on the

data by a colleague of one of Complaint Counsel's expert witnesses, in papers that were retracted and withdrawn from publication, over twenty years ago.

retracted.² However, Respondents also mistakenly assert that this printout establishes that another study, *Hypertrophic cardiomyopathy* was also not retracted. *Reply* at 2. It appears

that entries 1-6 and 7 all relate to a single study and that entry 1 is the retraction of that study.

from publication. *See Reply* at Exhibit 1.

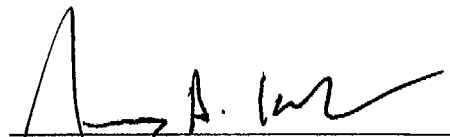
Respondents' *Reply* resorts to mischaracterizations and inconsistent statements in an

effort to muddy the factual record, attack the integrity of Complaint Counsel, and create

CERTIFICATION OF REVIEWING OFFICIAL

I certify that I have reviewed the attached public filing prior to its filing to ensure the accuracy

and redaction of materials subject to the *Protective Order* in this matter and protect against any violation of that *Order* or applicable RULE OF PRACTICE.



James A. Kohm
Associate Director, Division of Enforcement
Bureau of Consumer Protection

I hereby certify that on this 20th day of October 2005, I caused *Complaint Counsel's Opposition to Respondents' Petition for Leave to File Reply* to be served:

- (1) the original, two (2) paper copies filed by hand delivery and one (1) electronic copy via email to:
Donald S. Clark, Secretary
Federal Trade Commission
600 Penn. Ave., N.W., Room H-135
Washington, D.C. 20580
- (2) two (2) paper copies served by hand delivery to:
The Honorable Stephen J. McGuire
Administrative Law Judge
600 Penn. Ave., N.W., Room H-104
Washington, D.C. 20580
- (3) one (1) electronic copy via email and one (1) paper copy by first class mail to the following persons:

Stephen E. Nagin
Nagin Gallop Figueroa P.A.

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