

**Dissenting Statement of Commissioner Edith Ramirez**

**In the Matter of  
THE NORTH CAROLINA BOARD OF DENTAL EXAMINERS  
Docket No. 9343**

I respectfully dissent from the decision to grant Respondent North Carolina State Board of Dental Examiners Application for a Stay of Order Pending Review by the U.S. Court of Appeals. In my view, the Board has not shown that it is likely to succeed on appeal or that, absent a stay, it will suffer irreparable harm. This, together with the harm to competition the Commission has identified and sought to remedy, leads me to conclude that the public interest would be best served by immediate enforcement of our order.

The Board on the claim that order improperly interfere ies, resulting in irreparable harm to the Board and the citizens of North Carolina. The claim does not withstand scrutiny. In addressing the first factor of the applicable test, likelihood of success on appeal, the Board relies on arguments the Commission has already twice considered and rejected, as reflected in our

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In fact, the relief fashioned by the Commission, carefully and narrowly tailored as it is to forbid only the exclusionary conduct, would do no such thing. By its express terms, the order permits the Board to enforce the North Carolina Dental Practice Act in the manner specified by the North Carolina legislature. The Board may investigate suspected violations of the Act, institute court actions for alleged violations, and pursue available administrative remedies. Final Order at 4. The order even makes clear that the Board may notify regarding suspected violations. *Id.* The Board is only prohibited from conduct it claims it has not engaged in for at least the last two years: non-dentists to stop providing teeth whitening services and conveying to potential entrants or lessors of commercial property that non-dentist teeth whitening is illegal. *Id.* § 2; at 8.

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The majority nonetheless makes a

effectiveness of the corrective notices the Commission has ordered. Finally, in the absence of an enforceable order, there is nothing to prevent the Board from resuming its anticompetitive campaign of sending cease and desist letters to potential new entrants or returning firms.

The Board therefore has not shown that the equities weigh in its favor or that a stay is otherwise warranted. In my view, the public interest calls for enforcement of the order without delay.