

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**        **Lina M. Khan, Chair  
Noah Joshua Phillips  
Rebecca Kelly Slaughter  
Christine S. Wilson**

In the Matter of	)	
	)	<b>DECISION AND ORDER</b>
<b>BOARD OF DENTAL EXAMINERS OF ALABAMA,</b>	)	<b>Docket No. C-4757</b>
a State Agency.	)	
	)	

**DECISION**

Respondent, which it is hereby notified by the Commission, the Commission has determined that Respondent has violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondent and the Bureau of Competition executed an Agreement Containing Consent (Consent Agreement) containing (1) an admission by Respondent of all the material facts set forth in the Draft Complaint, (2) a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that Respondent has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) a statement that Respondent has not violated the Commission's Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the said Act, and that a complaint should issue stating its charges in that regard. The Commission accepted the Consent Agreement and placed it on the public record for the public's review and consideration of the same.

its executive offices and principal place of business located at 2229 Rocky Ridge Road, Birmingham, Alabama 35216.

2. The Commission has jurisdiction of the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

## **ORDER**

### **I. Definitions**

**IT IS HEREBY ORDERED** that, as used in this Order, the following definitions, shall apply:

- A. “Board” or “Respondent” means the Board of Dental Examiners of Alabama, and its committees, groups, members, employees, agents, representatives, and assigns.
- B. “Commission” means the Federal Trade Commission.
- C. “Alabama Dental Practice Act” means the Code of Alabama, Title 34, Chapter 9 (Dentists and Dental Hygienists) (Ala. Code § 34-9-1, *et. seq.*).
- D. “Clear Aligner Platform” means any Person that provides, or facilitates the provision of, remote treatment for malocclusion through the provision of Clear Aligner Therapy, using remote supervision by a Dentist.
- E. “Clear Aligner Therapy” means the use of Intraoral Scanning and fabricated, removable aligners for the treatment of malocclusion.
- F. “Dentist” means any individual holding a license, issued by the Board, to practice dentistry in Alabama.
- G. “Intraoral Scan” or “Intraoral Scanning” means the capture and creation of dental pictures, photographs, or images using a device, such as an *iTero* brand device or similar device, to scan inside of a patient’s mouth. The terms Intraoral Scan and Intraoral Scanning do not include radiographic or x-ray imagining techniques.
- H. “Non-Dentist Provider” means any Person other than a Dentist that provides Clear Aligner Therapy.
- I. “Person” means both natural and artificial persons, including but not limited to, corporations and unincorporated entities.



did not previously receive a copy of this Order and the Complaint from Respondent, no later than 30 days from the date that such Person assumes his or her position.

#### **IV. Notice to the Commission**

**IT IS FURTHER ORDERED** that, from the date this Order is issued, Respondent shall notify the Commission no later than 60 days after any publication of advance notice of any proposed change to Chapter 270 of the Alabama Administrative Code that relates to Intraoral Scanning or Clear Aligner Platforms, including modifications to the existing rules or proposals for new rules.

#### **V. Compliance Reports**

**IT IS FURTHER ORDERED** that Respondent shall file verified written reports (“compliance reports”) in accordance with the following:

- A. Respondent shall submit interim compliance reports 30 days after the Order is issued, and every 60 days thereafter until Respondent has fully complied with Paragraph III.A.; annual compliance reports one year after the date this Order is issued, and annually for the next 5 years on the anniversary of that date; and additional compliance reports as the Commission or its staff may request.
- B. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent is in compliance with the Order. Conclusory statements that Respondent has complied with its obligations under the Order are insufficient. Respondent shall include in its report, among other information or documentation that may be necessary to demonstrate compliance:
  - 1. A full description of the measures Respondent has implemented or plans to implement to ensure that it has complied or will comply with each paragraph of the Order;
  - 2. A full description of any enforcement action and the circumstances leading to such enforcement action, including the sending of any cease and desist letter, against any Clear Aligner Platform. Each description should include copies of any cease and desist letter or compliant filed by the Board, as applicable;
  - 3. A full description of any enforcement action and the circumstances leading to such enforcement action, including the sending of any cease and desist letter, against any Dentist or Non-Dentist Provider related to Intraoral Scanning. Each description should include copies of any cease and desist letter or compliant filed by the Board, as applicable; and
  - 4. Copies of notices sent pursuant to Paragraph III of the Order.

*Provided, however,* that the Board need not provide any information under Paragraphs V.B.2 or V.B.3 the disclosure of which would violate Ala. Admin. Code r. 270-x-1.08(3).

- C. Respondent shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and

### **VIII. Purpose**

**IT IS FURTHER ORDERED** that the purpose of this Order is to remedy the harm to competition in the provision of Clear Aligner Therapy as the Commission alleged in its Complaint.

### **IX. Term**

**IT IS FURTHER ORDERED** that this Order shall terminate on December 20, 2031.

By the Commission.

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## Appendix A

1. SmileDirect Club, LLC
2. Candid Care Co.
3. Smilelove LLC