

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE
WAKE COUNTY 2017 APR 24 PM 4:24 SUPERIOR COURT DIVISION
12 CVS _____

WAKE COUNTY, N.C.)
SUSAN F. VICK and ALLIANCE FOR)
ACCESS TO DENTAL CARE, INC.)
_____) _____
Plaintiffs,)
v.)
NORTH CAROLINA STATE BOARD OF)
DENTAL EXAMINERS,)
Defendant.)
_____)

COMPLAINT

Plaintiffs Susan F. Vick and Alliance for Access to Dental Care, Inc., by their undersigned counsel, and pursuant to the North Carolina Rules of Civil Procedure, allege for their Complaint as follows:

PARTIES

1. Plaintiff Susan F. Vick ("Vick") is an adult resident of Raleigh, Wake County, North Carolina.
2. Plaintiff Alliance for Access to Dental Care, Inc. ("AADC") is a non-profit corporation organized under the laws of the State of North Carolina, and is qualified under section 501(c)(6) of the Internal Revenue Code of 1986, as amended. AADC's principal place of business is in Wake County, North Carolina, and its registered agent is Susan F. Vick.
3. Ms. Vick serves as Executive Director of AADC, and in that capacity she is authorized to correspond and act on AADC's behalf.

4. At all times relevant hereto, Ms. Vick was a registered lobbyist employed by AADC to act on its behalf with regard to legislation, either proposed or pending, before the North Carolina General Assembly.

5. AADC was formed to promote access to dental care in North Carolina, including undertaking a study of the persistent dental shortage in North Carolina, existing since 1967, the reasons for the shortage, and the corresponding impact on the state's citizenry and practicing dentists. AADC was also formed to educate members of the General Assembly on the dental shortage in light of a bill introduced by the North Carolina Dental Society in April of 2011, also known as Senate Bill 655 ("SB 655").

6. AADC's members are dental service organizations ("DSO's") who provide non-clinical clerical and support services and functions to 37 dental practices in the state of North Carolina. Those 37 dental practices have provided dental care for approximately 200,000 patient visits in the state over the past two years and employ approximately 300 persons with an estimated payroll of approximately \$25,000,000. The DSO's which serve those 37 dental practices themselves employ approximately 310 persons in North Carolina with an estimated payroll of \$15,000,000.

7. Defendant North Carolina State Board of Dental Examiners ("the Board") is an agency of the State of North Carolina, established by operation of North Carolina General Statutes sections ("G.S.") 90-22 *et seq.* The Board regulates the practice of dentistry in North Carolina. The process agent appointed by the Board pursuant to North Carolina Rule of Civil Procedure 4(j)(4)b. is its Chief Operations Officer Bobby White.

THE PUBLIC RECORDS ACT

8. The Board is an agency of North Carolina government within the meaning of the North Carolina Public Records Act (“the Act”), G.S. 132-1 *et seq.*

9. Accordingly, documents and other things identified in G.S. 132-1(a) made or received by the Board in connection with the transaction of its business are public records, G.S. 132-1(a), unless any such document is subject to one of the specific exceptions noted in the Act or otherwise exempted from production under the Act.

10. The Act provides that it is the policy of this State that the people may obtain copies of their public records at minimal cost, which the Act defines as the actual cost of reproducing the public record. G.S. 132-1(b).

11. The custodian of each agency’s public records has the duty to permit inspection of such records at reasonable times, and to furnish copies as requested as promptly as possible upon payment of any fees as may be prescribed by law. G.S. 132-6(a).

PLAINTIFFS’ REQUEST UNDER THE ACT

12. On March 13, 2012, Vick, on behalf of AADC and its members, sent to the Board’s Chief Operations Officer, who is custodian of the Board’s public records, a letter invoking the Act and requesting copies of certain of the Board’s public records. An unsigned copy of that original signed letter is attached hereto and incorporated by reference as Exhibit 1.

13. Ms. Vick’s Public Records Act request specified a response date of March 30, 2012, and indicated a willingness to pay the costs of such production under the terms of the Act.

14. On March 29, 2012, representatives of the Board contacted Ms. Vick and requested additional time in which to respond to her request, which was given. At or about the

same time, Ms. Vick was informed that the Board had approximately 9000 pages to gather and produce in response to her request.

15. On April 4, 2012, representatives for the Board confirmed to Ms. Vick that documents responsive to the request were ready and available at the Board office.

16. On or about that same date, Ms. Vick went to the Board office and retrieved a box of documents which according to the Bates-stamped numbers on the documents produced contained only approximately 5,800 pages, not 9,000 pages. There are a significant number of duplicates within the documents produced.

17. Accompanying that box of documents was a letter dated 3 April, 2012, from the Board's Chief Operations Officer indicating that the Board had "responded to [Ms. Vick's] request for the production of documents subject to certain exceptions as set forth in applicable law, specifically N.C. Gen. Stat. § 132-1 *et seq.* and N.C. Gen. Stat. § 90-41(g) and interpretive case law." A copy of that letter is attached as Exhibit 2 and is incorporated herein by reference.

18. Among the reasons for non-production of otherwise-responsive documents given by the Board were attorney-client privilege, the Board's investigative privilege, and documents deposited with the North Carolina Department of Cultural Resources pursuant to applicable law.

19. The Act limits the applicability of the attorney-client privilege, in terms of both scope and time, with regard to documents that may be withheld from production in response to a request made under the Act.

20. Likewise, the Board's investigative privilege (G.S. 90-41(g)) is limited in scope by its own terms.

21. Ms. Vick, based on her own knowledge and that of interested others who are familiar with the Board, its operations, statements and dealings of the Board with and before the

General Assembly, and the Board's operations and its use of consultants and agents, asserts upon information and belief that there are other documents that should and do exist which are public records, which therefore are responsive to Ms. Vick's request, and which are not subject to any exception recognized under the Act, yet which were not produced by the Board in response to Ms. Vick's request.

22. By way of illustration, documents obtained by AADC through the North Carolina Institute of Medicine and through other independent sources, and also through documents already produced by the Board, demonstrate there likely exists a large volume of non-privileged e-mail exchanges between and among Dental Board members themselves, and with Dental Board staff, that were not produced. These e-mails would pertain to the dental shortage, the Board's response to previous inquiries by the North Carolina Institute of Medicine and General Assembly about the dental shortage, the ECU School of Dentistry, and the formation of a new dental testing agency by members of the Dental Board in 2005. The e-mails may also contain facts or information indicating a reason other than "public protection" for the passage of SB 655, since the "protection" of the public ostensibly provided by the bill has not been needed during the past twenty-plus years in which at least two members of AADC have operated in North Carolina.

23. The Board (including, but not limited to, its members, staff, employees, liaisons, contractors and agents) is the sole depository of most of the documents outlined in Ms. Vick's request. Upon information and belief, documents not produced by the Board contain information directly relevant to the dental shortage and to Senate Bill 655, which is being aggressively advanced by the NC Dental Society as necessary to protect members of the public. These documents, upon information and belief, are not available in any other form of which

Plaintiffs have knowledge or from any other source from which Plaintiffs have the ability to acquire such documents.

24. Ms. Vick and AADC have an urgent need for such documents in connection SB 655. Delay in the production of these documents will cause irreparable harm to Ms. Vick and AADC, as they will be unable to fully apprise the members of the General Assembly of the content of those documents prior to any vote on SB 655.

25. The North Carolina General Assembly will convene on May 16, 2012. AADC has been advised that the "agenda" for the May legislative session will be "set" in April and AADC has been requested by members of the General Assembly to disclose all concerns it has with the Board's motivations regarding SB 655 at this time. The production of these documents is critical to AADC because passage of SB 655 will permanently and irreparably damage the operations the members of AADC who operate in this state, two of whom having done so for between 20 and 30 years.

26. The Dental Board is charged with governing the practice of dentistry in North Carolina, and therefore also has an interest in SB 655, which would modify current provisions in the Dental Practice Act to give the Dental Board far more authority to regulate the non-clinical activities performed by DSO's, in part by giving the Dental Board authority to regulate non-clinical functions which do not constitute the practice of dentistry, such as accounting and tax services, the supply of business equipment and furnishings, leasehold arrangements, accounts payable services, as well as the terms of how such non-clinical functions may be furnished (including a continuing obligation on the DSO to provide certain of these functions even after the contract to do so has been terminated by the dental practice or otherwise).

27. The Board, by and through individual members and its agents, has indicated interests different than or other than that of protecting the public good in Board and Society publications, presentations and comments, in connection with the passage of SB 655.

28. The Dental Board is foreclosed from using any funds to promote or oppose in any manner the passage of any legislation. G.S. 93B-6.

29. Ms. Vick, on behalf of AADC, through counsel, wrote to the Board on April 13, asking for an item-by-item clarification as to why certain documents that do or should exist and which are not subject to any exception under the Act were not produced. A copy of that letter is attached hereto as Exhibit 3 and incorporated by reference.

30. In that same letter, Ms. Vick also explained why she believed some of the Board's claims of privilege or exception as a basis for not producing otherwise-responsive documents were overbroad or incorrect.

31. Ms. Vick requested a response from the Board to her counsel's letter of April 13, including supplementation of the Board's production of public records, by April 23.

32. On April 20, the Board's attorney responded in a one-page letter, generally disagreeing with Ms. Vick's "characterization that [the Board] has misinterpreted the Act" and indicating that "the Board complied to the best of its ability" with Ms. Vick's request. The Board further promised "a detailed response to your letter...on or about May 1, 2012," but pointedly did not forecast the further production of any documents. A copy of that letter is attached hereto as Exhibit 4 and incorporated by reference.

FIRST CLAIM/CAUSE OF ACTION
(Public Records Act)

33. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 32 above.

34. The Board is body subject to the provisions of the Public Records Act.

35. The Act requires that the Board permit inspection and copying of public records and that as promptly as possible the Board furnish copies of such public records upon the payment of any fees prescribed by law.

36. Upon information and belief, Ms. Vick and AADC have been denied access to public records in the possession or under the control of the Board within the meaning of G.S. 132-1 and G.S. 132-9.

37. Ms. Vick and AADC are therefore entitled to an order from this Court compelling the disclosure and copying of any public records not previously disclosed or provided to Ms. Vick in response to her March 13, 2012 or her April 13, 2012 requests under the Act.

38. Such order also should require that the Board identify all otherwise-responsive documents it is withholding on the grounds of an asserted exception to the Act. Such identification should at a minimum include all information necessary to determine whether the document is in fact excepted from production under the Act under the specific exception or category of exception claimed by the Board.

SECOND CLAIM/CAUSE OF ACTION
(For Injunctive Relief)

39. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 32 above.

40. AADC will be unable to properly evaluate the proposed legislation or provide the information requested of it and Vick will be unable to properly represent her client before the General Assembly without the documents Vick has requested and which the Board has failed to produce in response to Vick's request under the Public Records Act.

41. It is possible that the General Assembly will take up consideration of SB 655 as early as May 16, approximately 20 days from now. Plaintiffs need the documents at issue well in advance of that date so that Plaintiffs may analyze them, discuss them among themselves, fully, properly, and adequately inform members of the General Assembly regarding AADC's position and the Dental Board's position on SB 655, and otherwise formulate an appropriate strategy for this piece of legislation.

42. Should the Board be able to delay its production of the requested documents, Plaintiffs will lose their opportunity to effectively participate in the debate regarding SB 655, because the General Assembly may or will act whether or not the Board produces such documents and will not delay its consideration of the bill based on the Board's failure to produce the documents Ms. Vick has requested.

43. Such a delay in production therefore would constitute irreparable harm for Ms. Vick and AADC, since their ability to speak to and influence such legislation will be gone once the General Assembly acts.

44. Plaintiffs are entitled to a mandatory injunction from this Court requiring that the Board produce all public documents responsive to Ms. Vick's March 13 and April 13, 2012 requests.

45. Such injunction also should require that the Board identify all otherwise-responsive documents it is withholding on the grounds of an asserted exception to the Act. Such

identification should at a minimum include all information necessary to determine whether the document is in fact excepted from production under the Act under the specific exception or category of exception claimed by the Board.

THIRD CLAIM/CAUSE OF ACTION
(For Mandamus)

46. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 32 above.

47. Mandamus is appropriate to compel a board, agency, or individual under a legal obligation to perform an act sought to be enforced at the instance of a party having a right to such performance.

48. The Board is an agency of the State, and is subject to the duties imposed on it by the Act.

49. One of such duties is the duty to provide access to all public records, upon request of any person, for the purpose of inspection and copying of such records, without regard to the identity or status of such person or the purpose for which such person intends to use such records.

50. Plaintiffs have made such a request, in writing, and the Board, upon information and belief, did not provide Plaintiffs with access to or produce to Plaintiffs all of the public records made or received by the Board in the conduct of its business, as required by the Act, either in the first instance or in response to Plaintiffs' follow-on written request for clarification and supplementation.

51. Plaintiffs therefore are entitled to have mandamus issue from this Court to the Board, requiring that the Board immediately produce all public records responsive to the Plaintiffs' written requests.

52. Such writ of mandamus should also require that the Board identify all otherwise-responsive documents it is withholding on the grounds of an asserted exception to the Act. Such identification should at a minimum include all information necessary to determine whether the document is in fact excepted from production under the Act under the specific exception or category of exception claimed by the Board.

Plaintiffs Vick and AADC therefore request:

- a. That this Court order mandatory mediation pursuant to G.S. 7A-38.3E;
- b. That this Court issue an order pursuant to G.S. 132-9 compelling the Board to immediately disclose and produce to Plaintiffs all records made or received by it (including but not limited to its members, staff, employees, liaisons, contractors and agents) in the conduct of Board business which are responsive to Plaintiffs' requests for such documents;
- c. Alternatively, that the Court issue an injunction mandating and requiring that the Board immediately disclose and produce to Plaintiffs all records made or received by it (including but not limited to its members, staff, employees, liaisons, contractors and agents) in the conduct of Board business which are responsive to Plaintiffs' requests for such documents;
- d. Alternatively, that the Court issue a writ of mandamus to the Board, commanding the Board to immediately disclose and produce to Plaintiffs all records made or received by it (including but not limited to its members, staff, employees, liaisons, contractors and agents) in the conduct of Board business which are responsive to Plaintiffs' requests for such documents;

e. That the Court require that such production also contain a log or listing of documents otherwise responsive to Plaintiffs' Public Records Act requests which are or continue to be withheld from production by the Board based on any claim of privilege or other exception to or under the Act, with such log or listing to contain (1) sufficient descriptive detail to allow Plaintiffs and/or the Court to determine what basis for non-production is claimed by the Board and (2) information concerning each document sufficient to allow the Plaintiffs and/or the Court to determine whether such claim for non-production is justified;

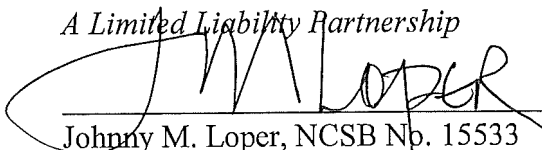
f. That the Court advance this matter on its docket as necessary to do justice and as provided in G.S.132-9(a);

g. That the Court award Plaintiffs their reasonable attorney's fees pursuant to G.S. 132-9(c); and,

h. That the Court award Plaintiffs such other or further relief to which they are entitled.

This the 24th day of April, 2012.

WOMBLE CARLYLE SANDRIDGE & RICE
A Limited Liability Partnership



Johnny M. Loper, NCSB No. 15533

Attorney for Plaintiffs

150 Fayetteville Street, Ste. 2100

P.O. Box 831

Raleigh, NC 27602

T: (919) 755-2116

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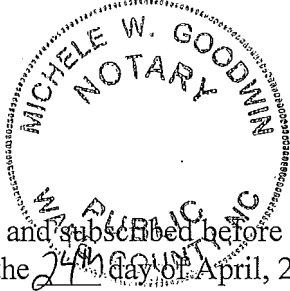
jloper@wcsr.com

NORTH CAROLINA

VERIFICATION

WAKE COUNTY

Susan F. Vick, being first duly sworn, deposes and says that she is one of the Plaintiffs in this action; that she has read the foregoing Complaint and that the same is true of her own knowledge except as to those matters and things therein which may be stated upon information and belief, and as to those things, she believes them to be true.



Susan F. Vick

SUSAN F. VICK

Sworn to and subscribed before me, this the 24th day of April, 2012.

Michele W. Goodwin
Notary Public *Michele W. Goodwin*

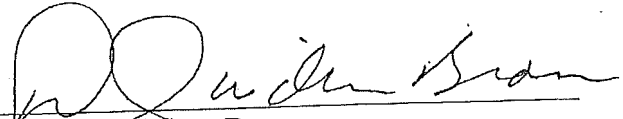
My Commission Expires: 10-5-13

NORTH CAROLINA


VERIFICATION

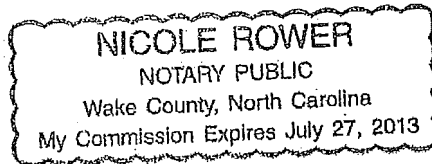
WAKE COUNTY

Douglas William Brown, being first duly sworn, deposes and says that he is a Director of Alliance for Access to Dental Care, Inc., one of the Plaintiffs in this action; that he has read the foregoing Complaint and that the same is true of his own knowledge except as to those matters and things therein which may be stated upon information and belief, and as to those things, he believes them to be true.


Douglas William Brown

Sworn to and subscribed before
me, this the 24 day of April, 2012.


Notary Public



My Commission Expires: July 27, 2013

EXHIBIT 1

**CERTIFIED MAIL
RETURN RECEIPT**

13 March 2012

Bobby D. White
Chief Operations Officer
North Carolina State Board of Dental Examiners
507 Airport Boulevard, Suite 105
Morrisville, NC 27560-8200

Dear Mr. White:

I write to request copies of Public Records from your office, in accordance with the provisions of Chapter 132 of the General Statutes of North Carolina.

As you know, you are required to maintain and provide copies of public records, as defined by NCGS 132-1, free or at minimal cost, to any person who requests such records. Thank you in advance for your cooperation.

I respectfully request copies of the following:

1. Records reflecting the number of dentists licensed to practice in North Carolina for each year from 1980 through 2011, inclusive.
2. Records reflecting the number of applicants for the dental examination for each year from 1980 through 2011, inclusive, in the following manner for each year: the total number of applicants from North Carolina and the number from North Carolina who passed the examination; the total number of out-of-state applicants and the number of out-of state applicants who passed the examination, broken down by state.
3. Records reflecting, for each year from 1980 through 2011, inclusive, the number of dentists who sought licensure in North Carolina through reciprocity or comity, and the number of dentists who were granted licensure through reciprocity or comity.
4. Copies of all records of the Board of Dental Examiners regarding the recommendations made to the Board of Dental Examiners through the North Carolina Institute of Medicine Task Force on Dental Care Access, during the years 1999-2005. I am requesting all communications in whatever form, including, but not limited to, documents, papers, reports, responses, letters, maps, films, sound recordings, magnetic or other tapes, electronic data-processing records, emails, notes from telephone conversations, and all other records, regardless of physical or electronic form or characteristics. This request includes all records as described above to and from officers and members of the North Carolina Dental Society, individual dentists, and members of the consuming public.

5. Copies of all records of the Board of Dental Examiners regarding the promulgation, negotiation and passage of the MAR in 2001. This request specifically includes all communications in whatever form, including, but not limited to, documents, maps, papers, letters, films, sound recordings, magnetic or other tapes, electronic data-processing records, emails, notes from telephone conversations, and all other records regardless of physical or electronic form or characteristics. This request includes all records as described above to and from officers and members of the North Carolina Dental Society, individual dentists, and members of the consuming public.
6. Copies of all records of the Board of Dental Examiners regarding portability of dental licensure prior to the enactment of Senate Bill 861 in 2002. This request specifically includes all communications in whatever form, including, but not limited to, documents, maps, papers, letters, films, sound recordings, magnetic or other tapes, electronic data-processing records, emails, notes from telephone conversations, and all other records regardless of physical or electronic form or characteristics. This request includes all records as described above to and from officers and members of the North Carolina Dental Society, individual dentists, and members of the consuming public.
7. Copies of all records of the Board of Dental Examiners regarding research and review of other regional dental examinations prior to the administration of the exam by the Council of Interstate Testing, Inc. This request specifically includes all communications in whatever form, including, but not limited to, documents, maps, papers, letters, films, sound recordings, magnetic or other tapes, electronic data-processing records, emails, notes from telephone conversations, and all other records regardless of physical or electronic form or characteristics. This request includes all records as described above to and from officers and members of the North Carolina Dental Society, individual dentists, and members of the consuming public.
8. Copies of all records of the Board of Dental Examiners regarding the 2006 appearances before the Joint Legislative Administrative Procedure Committee. This request specifically includes communications to and from the incorporators and officers of Council of Interstate Testing, Inc., and specifically includes all communications in whatever form, including, but not limited to, documents, maps, papers, letters, films, sound recordings, magnetic or other tapes, electronic data-processing records, emails, notes from telephone conversations, and all other records regardless of physical or electronic form or characteristics. This request includes all records as described above to and from officers and members of the North Carolina Dental Society, individual dentists, and members of the consuming public.
9. Copies of all records and communications to and from the Board of Dental Examiners concerning the formation of Council of Interstate Testing, Inc., and the selection and monitoring of Council of Interstate Testing,

Inc., to provide dentist examination services to the North Carolina Board of Dental Examiners and to other jurisdictions. This request specifically includes communications to and from the incorporators and officers of Council of Interstate Testing, Inc., and specifically includes all communications in whatever form, including, but not limited to, documents, maps, papers, letters, films, sound recordings, magnetic or other tapes, electronic data-processing records, emails, notes from telephone conversations, and all other records regardless of physical or electronic form or characteristics. This request includes all records as described above to and from officers and members of the North Carolina Dental Society, individual dentists, and members of the consuming public.

10. Any records of communications concerning or studies conducted by or contracted for by the Board of Dental Examiners addressing the issue of the lack of increase in the number of dentists in North Carolina, particularly in rural areas and in light of the growing population in North Carolina. This request includes all communications in whatever form sent or received by the Board in whatever form, including but not limited to documents, contracts, letters, maps, papers, films, sound recordings, magnetic or other tapes, electronic data-processing records, emails, notes from telephone conversations, paperwritings delivered, sent, or presented to the North Carolina General Assembly, and the communications of preparations for such paperwritings.
11. Copies of all communications to and from the Board of Dental Examiners concerning the issue of non-dental provision of teeth-whitening services, except for those confidential communications with attorneys concerning specific judicial or administrative actions, as provided for in NCGS 132-1.1 (a). I am requesting all non-confidential communications in whatever form, including, but not limited to documents, papers, letters, maps, films, sound recordings, magnetic or other tapes, electronic data-processing records, emails, notes from telephone conversations, and all other records regardless of physical or electronic form or characteristics. This request includes all records as described above to and from members and officers of the North Carolina Dental Society, individual dentists, and members of the consuming public.
12. Copies of all communications to and from the Board of Dental Examiners concerning the preparation, introduction and support of Senate Bill 655 and House Bill 698 in the 2011 Session of the North Carolina General Assembly. I am requesting all communications in whatever form, including, but not limited to, documents, papers, letters, maps, films, sound recordings, magnetic or other tapes, electronic data-processing records, emails, notes from telephone conversations, and all other records, regardless of physical or electronic form or characteristics. This request includes all records as described above to and from officers and members of the North Carolina Dental Society, individual dentists, and members of the consuming public.

13. At the meeting of the House Select Committee on Dentistry Management Arrangement Limits held on March 7, 2012 in Room 421 of the Legislative Office Building, Mr. Ken Burgess, General Counsel to the Board of Dental Examiners, described the Rulemaking and Rules Review Process conducted by the Board in 2001 in the adoption of the Rules that he stated form the basis for Senate Bill 655. He stated the record was in a box of a size he indicated by hand motions to be some two to three feet. I am requesting a copy of those records, including any court filings, as well as all communications to and from the Board of Dental Examiners concerning the preparation, submission and explanation of those Rules. This request includes all non-confidential communications in whatever form, including, but not limited to documents, papers, letters, maps, films, sound recordings, magnetic or other tapes, electronic data processing records, emails, notes from telephone conversations, and all other records regardless of physical or electronic form or characteristics. This request includes all records as described herein of communications to and from members and officers of the North Carolina Dental Society, individual dentists, and members of the consuming public. To the extent that any of the records requested herein are under the physical control of your counsel, I request that you obtain those records from him and make a copy available to me.
14. At the meeting of the House Select Committee on Dentistry Management Arrangement Limits held on March 7, 2012 in Room 421 of the Legislative Office Building, Mr. Ken Burgess, General Counsel to the Board of Dental Examiners, stated that he had obtained information from other states concerning the issue of whether the limitations provided for in Senate Bill 655 are consistent with the statutory limitations in other states. I am requesting a copy of all records of the obtaining of information about other state's limitations, in whatever form, including but not limited to documents, papers, letters, maps, films, sound recordings, magnetic or other tapes, electronic data processing records, emails, notes from telephone conversations, paperwritings, and all other records regardless of physical or electronic form or characteristics. To the extent that any of the records requested herein are in the physical control of your counsel, I request that you obtain those records from him and make a copy available to me.
15. All communications to and from the Board of Dental Examiners concerning the establishment of the Dental School at East Carolina University. I request all communications in whatever form, including but not limited to documents, surveys, papers, letters, maps, films, sound recordings, magnetic or other tapes, electronic data processing records, emails, notes from telephone conversations, petitions, and all other records regardless of physical or electronic form or characteristics. This request includes all records as described herein to and from members of the North Carolina Dental Society, individual dentists, and members of the consuming public.

16. Records reflecting the cost to register for and take the examination to become a licensed dentist in the State of North Carolina for each year from 1980 through 2012, inclusive. If there is a difference in cost for in state or out of state, please provide both costs. If there is a difference in cost for a dentist already licensed in another state, please provide that information.

I will make arrangements to have copies of these records picked up at your office at 10 AM, on Tuesday, March 30, 2012, in accordance with NCGS 132-1 (b) and NCGS 132-6.2. Please let me know in advance whether these copies will be free or what the minimal costs will be.

As I am sure you are aware as a custodian of public records, the failure to comply with the provisions of Chapter 132 of the General Statutes of North Carolina may lead to a criminal offense.

Sincerely,

Susan F. Vick
210 N. Person Street
Raleigh, NC 2760

EXHIBIT 2

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

MILLARD W. WESTER, III, D.D.S., President
KENNETH M. SADLER, D.D.S., Secretary-Treasurer
C. WAYNE HOLLAND, D.D.S., Past President
DR. JAMES B. HEMBY, JR., Consumer Member



DAVID A. HOWDY, D.D.S.
BRAD C. MORGAN, D.D.S.
STANLEY L. ALLEN, D.D.S.
CARLA J. STACK, R.D.H.

BOBBY D. WHITE, Chief Operations Officer

3 April 2012

Susan F. Vick
210 N. Person Street
Raleigh, NC 27601

RE: Public Records Request of March 13, 2012 (Hand Delivered)

Dear Ms. Vick:

Enclosed please find documents responsive to your public records request dated March 13, 2012, which was received by the N.C. State Board of Dental Examiners via certified mail on March 16, 2012. In your March 13, 2012 correspondence, you requested production of documents responsive to your request by March 30, 2012. Based upon communications between our counsel, Ken Burgess, and you on Thursday, March 29, 2012, we agreed to respond to your public records request by Tuesday, April 2, 2012.

In addition, we have responded to your request for the production of documents subject to certain exceptions as set forth in applicable law, specifically N.C. Gen. Stat. § 132-1 *et seq.* and N.C. Gen. Stat. § 90-41(g) and interpretive case law. Included in those exceptions and thus not produced herewith are documents which:

1. Are excluded from the definition of public documents by N.C. Gen. Stat. § 132-1 *et seq.*;
2. Are protected by the attorney-client privilege;
3. Are protected by the N.C. State Board of Dental Examiner's investigative privilege codified at N.C. Gen. Stat. § 90-41(g); and/or
4. Any documents which have been deposited with the North Carolina Department of Cultural Resources pursuant to applicable law.

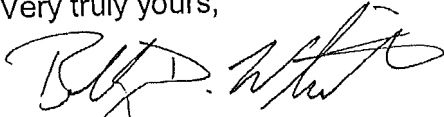
With respect to item 14 of your request, Mr. Burgess stated at the March 7, 2012 meeting of the House Select Committee on Dental Management Arrangements that he had reviewed the statutes and regulations of several states listed on a chart distributed by Mr. Tom Fetzer at that meeting. That review was conducted online and so there are no documents responsive to that portion of your request. Further, Mr. Burgess also

Susan F. Vick
Page 2

stated that Board representatives had contacted the boards of dental examiners in the states listed on the chart distributed by Mr. Fetzer by telephone and described the substance of what those board representatives discussed. Those conversations were conducted by Bobby White, Chief Operations Officer of the N.C. State Board of Dental Examiners. Notes relating to some of those conversations are included with this production.

With respect to item 10, the Board of Dental Examiners does not and has not conducted any studies regarding the number of dentists in North Carolina. However, the Board does assist in dental population research by providing data downloads directly to the Sheps Center of the University of North Carolina where such studies are conducted and published.

Very truly yours,



Bobby D. White
Chief Operations Officer

EXHIBIT 3

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April 13, 2012

Bobby D. White
Chief Operations Officer
North Carolina State Board of Dental Examiners
507 Airport Boulevard, Suite 105
Morrisville, NC 27560-8200

By e-mail and U. S. Mail

RE: *Public Records Act request from Susan Vick dated 13 March 2012*

Dear Bobby:

I represent Susan F. Vick with regard to the Public Records Act Request she sent to you on March 13. Ms. Vick has provided me with a copy of the documents the Dental Board produced in response to her request and a copy of your letter of April 3 accompanying those documents. Because we question whether all responsive documents in the Board's possession or subject to its control were produced, we write this letter seeking supplementation of your response or clarification as to why otherwise responsive documents were not produced.

Below we provide you with an item-by-item set of questions and/or comments about the Board's responses to our request. Some of our questions or comments request clarification of your responses. Some indicate our skepticism that all documents responsive to the request have been produced – for example, it appears to us that e-mails should exist relating to several requests, yet few or none were produced.

It also appears to us from your letter that we may have some fundamental disagreements about what documents constitute public records under the Act. Accordingly, let me give you an overview of some classes of documents that we believe fall under the Act which it appears may have been excluded from your production. And while I find no requirement in the Act which requires a "privilege log" or other identification of documents which, while otherwise responsive to a request under the Act, are being withheld, I think identifying such documents (if any), at least by document class if not individually so that Ms. Vick and I can make a reasoned decision on what actions to take, is both pragmatic and well within the spirit of the Act and may save both your Board and Ms. Vick time and expense in the long run.

We believe:

- The Act applies to any document received by anyone acting on behalf of the Board while carrying out Board business. So, the Act applies not only to Board members but to its staff and consultants, its full and part time employees, and any other agent of the Board. All of our requests should be read as having been made in this context.
- The Act contains no provision limiting the time period that can be covered by a request. If a document exists, it must be produced if it falls within the scope of the request, no matter its age.
- There is no deliberative privilege exception, so, for example, drafts and personal notes are public records under the Act.
- If a document is a public record, it is a public record no matter where it resides....on a board member or staff member's personal computer, in a "personal" file, or anywhere else.
- You mention in your letter that you have not produced documents "protected by the attorney-client privilege". However, the attorney-client privilege exception under the Act is very limited. Under G.S. 132-1.1(a), the privilege covers only communications to the Board from counsel concerning claims against or on behalf of the governmental entity in litigation or judicial action – so the Act provides only very limited protection in this regard. And note that any communications which do indeed qualify as privileged under the Act are privileged for a maximum of three years [G.S. 132-1.1(a)], so no documents which otherwise might qualify as privileged but which were created prior to April 3, 2009 (three years prior to your response) can be lawfully withheld under a claim of privilege.
- To the extent the Board's reference to "attorney-client privilege[d]" information also is meant to cover attorney trial preparation materials, G.S. 132-1.9(e) generally provides that once that proceeding and any appeals are over or the statute of limitations or repose has expired, such documents are to be made available for public inspection.
- The Board's investigative privilege is not absolute: to be exempted from disclosure the documents must have been gathered with regard to "a licensing or disciplinary matter" – a subject area which none of Ms. Vick's request deals with, at least nominally. And any documents made public via notice or being introduced into evidence, even if gathered during such an investigation, are public records under G.S. 90-41(g).
- To the extent the Board has a document retention policy (in addition to or other than the Public Records Act), I would appreciate receiving a copy of that policy.

With the foregoing as context, here are our questions, requests for clarification, and requests for supplementation of your April 3 response.

1. Pursuant to No. 2 of the request, dental examination applicant information for the years 1980, 1981, and 1983 was not produced. Additionally, for many of the years for which information was provided, the in-state and out-of-state component was not produced.

2. Pursuant to No. 3 of the request, your production included some letters from out-of-state dentists who had written the Board regarding reciprocity or comity but there was no indication as to how many inquiries there were in total. Is there a list of dentists who sought licensure through these mechanisms or are we to deduce from the letters produced that this is the entire list?

3. Pursuant to No. 4 of the request, copies of e-mails pertaining to the Task Force recommendations are included in the request and were not produced. Additionally, some of the records produced last week reflect that there was, in fact, e-mail "commentary" or notes provided by Dr. Delma Kinlaw surrounding this subject matter. Ms. Vick cites your number-stamped pages 735 and 1793 as examples.

4. Pursuant to No. 6 of the request, copies of e-mails pertaining to the subject matter of portability were not produced. We are aware that different dental board members spoke on this subject frequently, and in public forums and presentations, on behalf of the Dental Board.

5. Pursuant to No. 7 of the request, the documents produced indicate the Board prepared "a report" to the General Assembly and/or the Legislature regarding its review of other regional dental exams and its findings. To her knowledge Ms. Vick does not have that report in your initial response. Additionally, this request would encompass board member and staff e-mails regarding the subject matter of other regional dental exams/findings reviewed and also the report produced.

6. Pursuant to No. 8 of the request, copies of e-mails pertaining to preparation for and appearances before the Joint Legislative Administrative Procedure Committee were not produced. Records reflect that Dr. Stan Hardesty and Dr. Delma Kinlaw and you attended some or all of these committee hearings and made presentations at those hearings.

7. Pursuant to No. 9 of the request, copies of e-mails pertaining to the formation of CITA were not produced. Records reflect that Dr. Delma Kinlaw was very involved in the events leading up to the formation of CITA in 2005 and current records produced reflect that you assisted him with that endeavor. Missing are e-mails that would have been exchanged between Dr. Delma Kinlaw, Dr. Stan Hardesty, yourself and possibly any other board or staff member involved in the concept or formation of CITA.

8. Pursuant to No. 12 of the request, copies of e-mails pertaining to the preparation of, introduction of and support for Senate Bill 655 were not produced. Ms. Vick has been informed that Dr. Kinlaw assisted with language in the bill, and other board members may have assisted as well. Also, to the extent our previous request would not have covered drafts,

proposed drafts, revised, or marked-up versions of SB 655, please consider this a separate or supplemental request for such documents.

9. Pursuant to No. 13 of the request, Mr. Burgess did indicate that he had reviewed a large box of materials at the March 2, 2012 House Select Committee meeting. It appears to Ms. Vick that the documents produced constitute much less than the amount of information Mr. Burgess described in his comments and his hand gestures to the Committee.

10. Pursuant to Request No. 14, copies of e-mails pertaining to the subject matter of the research and review of other states' statutory limitations similar to those in SB 655 were not produced.

11. Pursuant to Request No. 15, Ms. Vick is not aware of any documents produced that are responsive to this Request.

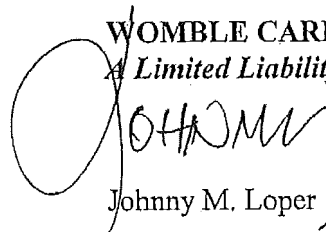
12. Pursuant to Request No. 16, Ms. Vick is not aware of any documents produced that are responsive to this request.

We would appreciate a prompt response to the foregoing explanation of our position as to what the Public Record Act requires, whether the Board or its agents have documents that are otherwise responsive but are being withheld for some reason, an articulation of any reasons for withholding such documents, and responses to our requests for clarification or supplementation numbered 1 – 12 above. Under the circumstances, we believe it is reasonable to expect your response by April 23. We would be happy to receive a rolling production/partial compliance as copies of any additional responsive documents become available.

Since the response to Ms. Vick's request came from you, I am addressing this letter to you; I'm happy to discuss this with you or the Board's attorney as you deem appropriate. I've copied Ken Burgess on this letter as a courtesy.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Limited Liability Partnership



Johnny M. Loper

JML:mwg

cc: Susan F. Vick
Ken Burgess, Esq.

EXHIBIT 4

April 20, 2012

Kenneth L. Burgess
Partner
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VIA EMAIL AND U.S. MAIL

Johnny M. Loper
Womble Carlyle Sandridge & Rice
Post Office Box 831
Raleigh, N.C. 27602

RE: Your Correspondence of April 13, 2012

Dear Mr. Loper:

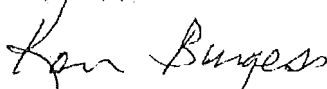
I am writing on behalf of this firm's client, the North Carolina State Board of Dental Examiners ("the Board") to respond to your correspondence to the Board's Chief Operations Officer, Bobby White, dated April 13, 2012. Your correspondence related to a public records request made to the Board by your client, Ms. Susan Vick, dated March 13, 2012 and received by the Board on March 16, 2012 ("the Request").

In your correspondence, you take issue with the Board's response to the Request in two respects. First, you suggest that the Board interprets the North Carolina Public Records Act ("the Act") differently than you and Ms. Vick. Second, you take issue with the Board's response to the Request with respect to virtually every category of documents requested therein.

By way of general response, the Board disagrees with your characterization that it has misinterpreted the Act. In addition, the Board believes it has properly responded to the Request. Ms. Vick requested records dating back over 30 years, comprising some sixteen categories of documents. Some of the documents requested either originated with another agency, such as the Rules Review Commission, which is the official custodian of them or, because of their age, now reside with the North Carolina Department of Cultural Resources. Nonetheless, the Board complied to the best of its ability with those requests, producing nearly 6,000 pages of responsive documents and did so in sixteen days, on April 2, 2012, a date agreed to by Ms. Vick.

All of that being said, we will provide a detailed response to your letter of April 13, 2012 and anticipate being able to provide that response to you on or about May 1, 2012. Since Ms. Vick has now retained you as counsel, I request that you direct all further correspondence from her counsel regarding these issues to this office.

Very truly yours,



Kenneth L. Burgess
Partner

cc: Bobby White