

Fleur de Lis

FTC Update

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DENTAL BOARD FALLOUT LITIGATION SNAPSHOT

Case	State/Complaint Filing Date	Defendant(s)	Plaintiff(s)	Status of Case	Conduct at Issue
NC Dental Board v. FTC	Appeal from FTC Decision	Federal Trade Commission	Board	U.S. Supreme Court concluded the Board was not immune.	Enforcement against non-licensurees
Allibone v. Texas Medical Board	Texas (1/30/17)	Board and its members in their official and individual capacities	Licensee	Complaint filed	Horizontal restraint of trade, horizontal market reallocation, price fixing, monopoly.
Access Medical v. MS State Bd. of Medical Licensure	Mississippi (4/24/15)	Board and 10 John Does	Client's licensee and non-licensure owners	Stipulation of dismissal	Rules limiting non-licensurees from owning clinics
Bullinger v. OH State Board of Registration for Professional Engineers and Surveyors	Ohio (11/1/14)	Board and various third parties	Disciplined licensee (pro se)	Dismissed for lack of jurisdiction and failure to state a claim	Disatisfied client colluded with the Board in violation of the Sherman Act
Barry v. State Bar of California	California (3/6/17)	State Bar and its members in their individual capacities; Commission on Judicial Performance; unknown State Bar employee who posted disciplinary information about Barry on the Bar's website in official and individual capacity; etc.	Disciplined licensee and two of her clients	Complaint filed	Sherman Act violations; Constitutional claims, including violations of the First Amendment and various due process allegations
Bauer v. Pa. State Bd. of Auctioneer Examiners	Pennsylvania (10/14/15)	Board, Board Chair, and three licensee members in their individual and official capacities	Attorney non-licensuree	Sherman Act portion of case stayed pending resolution of a related state case, which was resolved 2/16/17; petition for allowance of appeal filed 9/20/17	Clintion of and levying fine on attorney who sold his clients' toy train in online auctions

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Coeesterm.com, Inc. v. VA Real Estate Appraiser Bd	Virginia (8/31/15)	Board and its members (official capacity)	Applicant	Voluntarily dismissed	Recommendation that licensure be denied due to past conduct
Colinardes v. Battle	Georgia (9/12/15)	Exec. Director of Georgia Board of Dentistry (official capacity) and its members (individual and official capacities), Attorney General	Non-licensuree and her company	Complaint filed seeking declaratory and injunctive relief and reble damages; voluntarily dismissed	Harassment and threats by the Board against a non-licensed teeth whitener; no formal enforcement action taken
Colonial Downs, L.P. v. VA Racing Commission	Virginia (11/13/15)	Commission, its Executive Secretary and members (official capacity), VA Secretary of Agriculture and Forestry	Unlimited license applicant	Voluntarily dismissed	Amendment to the Va. Racing Act that negatively impacted the plaintiff's racetrack and off-track betting operations
Cooper v. Vaught	Indiana (4/7/17)	Board director, Board and its members in official capacities; exec. director of the state's Professional Licensing Agency	Licensee and professional association	Complaint filed seeking declaratory and injunctive relief	Regulation restricting specialty advertising; Constitutional and antitrust claims
Espress Lien, Inc. v. Cleveland Metropolitan Bar Association	Louisiana (2/9/15)	Metropolitan bar association and its unauthorized practice committee (identified as a participant in the relevant market in their individual capacities), state bar association, and Board	Non-licensuree	Claim against the state bar association voluntarily dismissed; claims against other defendants were voluntarily dismissed with prejudice	Cease and desist emails, letters and phone calls directed to an online lien services provider re: the unauthorized practice of law
Henry v. NC Acupuncture Licensing Board	North Carolina (10/7/15)	Board and its members (official capacities)	Licensed physical therapists and their patients	Complaint filed; permanent injunction sought; motion to dismiss denied as to antitrust claim and granted as to due process	Anticompetitive conduct in excluding physical therapists who perform dry needling from the market; violation of due process

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In re Judicial Review of Final Agency Decision of the NC Bd. of CPA Examiners in the Matter of Johnson	North Carolina (7/22/16)	Board (respondent)	Disciplined licensee and her firm (petitioners)	Petition for review filed; Board's order affirmed; appeal to N.C. Supreme Court filed 5/4/17	Review of final agency decision; restraint of trade in violation of the Sherman Act and N.C. Constitution
Jemsek v. NC Medical Board	North Carolina (2/20/16)	Board and its members (present and past, individual and official capacities)	Inactive Licensee	Complaint filed; injunctive relief and declaratory judgment sought; case dismissed for failure to state a claim; notice of appeal to 4th Cir. filed 3/9/17	Boycott, price fixing, monopolization, restraint of trade as the result of Medical Board's disciplinary actions re: licensee's treatment of Lyme disease
Kinney v. State Bar of California	California (4/27/16)	Bar and 10 John Does (individual and official capacity), California Supreme Court	Licensee placed on "venetian litigant" list	Case was dismissed based on immunity under the 11th Amendment; appeal to 9th Cir. filed 9/22/16	Alleged anticompetitive disciplinary proceedings by the California Bar
LegalZoom.com, Inc. v. NC State Bar	North Carolina (6/3/15)	Bar, its president (official capacity), and 3 bar attorneys (individual and official capacities)	Non-licensee	Consent judgment signed in a related state lawsuit; lawsuit was voluntarily dismissed	Rules restricting legal plans
Petrie v. VA Bd. of Medicine	Virginia (12/5/13)	Board and its members (individual and official capacities)	Licensee	Fourth Circuit upheld the federal district court's opinion in favor of the Board; there was no Sherman Act violation; petition for certiorari denied by the U.S. Supreme Court 11/28/16	Discipline of a licensee for unauthorized practice

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Rivero-Nazario v. Corporacion del Fondo del Seguro del Estado	Puerto Rico (7/31/14)	Public corporation and its officers and directors (personal and official capacity)	Licensees	Motion to dismiss Sherman Act claims granted; defendants were immune under <i>Parker</i>	Public corporation discriminated against chiropractors, excluding them from workers compensation referrals
Robb v. CT Bd. of Veterinary Medicine	Connecticut (6/12/15)	Board and its members (individual and official capacity)	Licensee	Motion to dismiss Sherman Act claim was granted; plaintiff failed to make sufficient factual allegations to support his claim	Threatened discipline of licensee; antitrust violations
Rodgers v. LA State Bd. of Nursing	Louisiana (8/12/15)	Board (although not named as a defendant, the national association of state boards was alleged to have colluded with the state board)	Student non-licensee	Court resolved the motion to dismiss in the Board's favor; Board was immune under the 11th Amendment; Six Circuit held two-prong test to analyze state action immunity was not applicable to sovereign immunity; petition for certiorari denied 5/22/17	Termination of university baccalaureate nursing degree
Rosenberg v. State of Florida	Florida (6/3/15)	Florida Bar, State of FL, and State Supreme Court	Suspended licensee	Court resolved motion to dismiss in Florida Bar's favor because it was a sovereign entity and the federal court lacked subject matter jurisdiction	Grievance committee and Florida Bar were active market participants; their investigation of the plaintiff's conduct was not actively supervised
Strategic Pharmaceuticals Solutions, Inc. v. NY State Board of Pharmacy	Nevada (1/29/16)	Board and its members (individual and official capacities)	Out of state licensee	Complaint filed; injunctive relief; motion to dismiss has been filed by the board and its members; voluntary dismissal filed 2/3/17	Board alleged out-of-state pharmacy violated the Board's anti-backsback regulation

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Teladoc, Inc. v. TX Medical Bd.	Texas (4/29/15)	Board and its members (individual and official capacities)	Non-licensee	Complaint filed; preliminary injunction issued against rule; board and board members in their individual capacities were dismissed; motion to dismiss by the board members in their official capacities was denied; Board voluntarily dismissed its 5th Circuit appeal due to procedural and jurisdictional issues; case is stayed until 8/1/17	Promulgation of rules restricting telemedicine practice and requiring a "face-to-face or in-person evaluation"; injunction only case; no damages sought
Turner v. Va. Dept. of Medical Assistance Services	Virginia (11/15/16)	Va. state agency, third-party plan administrator, and competitors	Licensee	Complaint filed; motions to dismiss granted	Antitrust; tortious interference with contract and economic advantage
Ventec Corp. v. Bona	Louisiana (8/17/16)	Members of the La. Bd. of Examiners of Certified Shorthand Reporters in their official and individual capacities	Certified Delaware court-reporting services in La.	Complaint filed; motion to dismiss granted in part and denied in part; motion for reconsideration filed 5/4/17	Antitrust and constitutional claims; complaint sought declaratory relief, injunctive relief and damages
Wallen v. St. Louis Metropolitan Taxical Commission	Missouri (9/18/15)	Commission and its members, and their taxi cab companies	Potential Uber customers, potential Uber drivers, Uber, and the Uber app licensee	Complaint filed; taxi cab companies were dismissed; motion to dismiss denied for the Commission and its members due to lack of clear articulation of state policy; amended complaint filed 10/20/16; parties made oral request for settlement at 6/12/17 status conference	Restraint of trade; preventing Uber and similar companies from entering the market

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WSPTN Corp. v. TN Dept. of Health, Council for Hearing Instrument Specialists	Tennessee (7/30/15)	Licensing board, Board members and former Board chair (individual and official capacities)	Employers and licensee-applicant employees	Complaint filed; attorney general reported significant progress in settlement discussions; defendants' motion to dismiss was denied in moot	Restraint of trade; monopolization on hearing aid market via a difficult-to-pass practicum test and harassment of plaintiffs

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