NORTH CAROLINA: Summary of Fraud and Abuse Statutes and Regulations

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1) ANTI-KICKBACK

It is unlawful for a health care provider licensed under Chapter 90 of the North Carolina General Statutes to “financially compensate in any manner a person, firm, or corporation for recommending or securing the health care provider’s employment by a patient, or as a reward for having made a recommendation resulting in the health care provider’s employment by a patient.” A “health care provider” includes any person licensed, registered, or certified to engage in the practice of medicine, dentistry, optometry, osteopathy, chiropractic, nursing, podiatry, psychology, physical therapy, occupational therapy, or speech and language pathology and audiology. In addition, a health care provider shall not receive financial or other compensation provided solely or primarily for referring a patient to another health care provider.

Sanctions for engaging in the prohibited conduct include suspension or revocation of the offender’s license, non-renewal of the provider’s license, and any other disciplinary action authorized by law. This statute, however, includes a specific exception for a health care provider’s purchase of advertising that does not involve contact with a potential patient.

N.C. Gen. Stat. § 90-401.1—Direct Solicitation Prohibited
It is unlawful for a health care provider licensed under N.C. Gen. Stat. Ch. 90, or the health care provider’s employee or agent, to initiate direct personal contact or
telephone contact with an injured, diseased, or infirmed person or anyone in that person’s household, if the purpose of the contact is to persuade the person to become the health care provider’s patient. This prohibition applies for a period of 90 days following an injury or the onset of a medical condition. However, posted letters, brochures, or information packages are permitted to solicit a patient, provided that no direct personal contact is involved.

Sanctions for engaging in the prohibited conduct include suspension or revocation of the offender’s license, non-renewal of the provider’s license, and any other disciplinary action authorized by law.

**Title 21 North Carolina Administrative Code § 16V.0101(19) — Board of Dental Examiners: Unprofessional Conduct by a Dentist**

The Board of Dental Examiners regulations provide that unprofessional conduct by a dentist includes “Giving or paying anything of value in exchange for a promise to refer or referral of potential patients.”

**Title 21 North Carolina Administrative Code § 16V.0102(15) — Board of Dental Examiners: Unprofessional Conduct by a Dental Hygienist**

The Board of Dental Examiners regulations provide that unprofessional conduct by a dental hygienist includes “Giving or paying anything of value in exchange for a promise to refer or referral of potential patients.”

**Title 21 North Carolina Administrative Code § 36.0217(c)(14) — Nursing: Revocation, Suspension, or Denial of License**

Board of Nursing regulations provide that disciplinary action may result from “directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a client, or other violations of G.S. 90-401 . . . .”

**Title 21 North Carolina Administrative Code § 48G.0601(a)(9) — Board of Physical Therapy Examiners: Disciplinary Actions**

The Board of Physical Therapy Examiners regulations provide that disciplinary action may result from the “offering, giving, soliciting, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a client.”

**Title 21 North Carolina Administrative Code § 61.0307(21) — Respiratory Care Board: Grounds for License Denial or Discipline**

The North Carolina Respiratory Care Board may deny, suspend, or revoke a license, or issue a letter of reprimand to a licensee, for “[p]aying or receiving any commission, bonus, kickback, or rebate to or from, or engaging in any fee-splitting arrangement in any form whatsoever with, a person, organization, or agency, either directly or indirectly, for goods or services rendered to patients referred by or to providers of health care goods and services.” These provisions, however, are not
construed to prevent a licensee from receiving a fee for professional consultation services.

**Title 21 North Carolina Administrative Code § 68.0511—Ethical Principals of Conduct for the Substance Abuse Professional: Remuneration**

The Substance Abuse Professional Licensing Board regulations provide that substance abuse professionals are required to establish financial arrangements in professional practice and in accord with the best interests of the client or person served, the professional and of the profession and are prohibited from sending or receiving any commission, rebate, or any other form of remuneration for referral of a client or a person served for professional services, or accepting a private fee or any other gift or gratuity having a cumulative value of twenty-five dollars ($25.00) or more for professional work with a person who is receiving such services with the professional or through the professional's institution or agency.

**Referral Fees and Fee-Splitting—North Carolina Medical Board Position Statement**

The North Carolina Medical Board (NCMB) characterizes “[p]ayment by or to a licensee solely for the referral of a patient” as unethical. Licensees “may not accept payment of any kind, in any form, from any source . . . for prescribing or referring a patient to said source.” Referrals “must be based on the skill and quality of the licensee to whom the patient has been referred or the quality and efficacy of the drug or product prescribed.” It also is unethical “for licensees to offer financial incentives or other valuable considerations to patients in exchange for recruitment of other patients.”

**Sale of Goods from Physician Offices—NCMB Position Statement**

The sale of products from physician offices creates a perceived conflict of interest. “Sale of practice-related items such as ointments, creams, and lotions by Dermatologists; splints and appliances by Orthopedists; spectacles by Ophthalmologists, etc., may be acceptable only after the patient has been told those or similar items can be obtained locally from other sources” and if the charges are reasonable. Physicians may not participate in exclusive distributorships or persuade patients to become dealers or distributors of profit-making goods or services. With certain limited exceptions, physicians should not sell any non-health-related goods from their offices or other treatment settings.

**2) PROHIBITIONS ON SELF-REFERRAL**


It is unlawful for a health care provider licensed under N.C. Gen. Stat. Ch. 90 to refer patients to an entity in which the provider or an immediate family member has an investment interest.¹ The term “referral,” however, specifically excludes any

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¹ An “immediate family member” includes a spouse or dependent minor child. N.C. Gen. Stat. § 90-
referrals for a service provided by, or provided under the personal supervision of, a 
sole health care provider or by a member of a group practice to the patients of that 
health care provider or group practice.²

A health care provider may not present to any individual or third-party payer an 
invoice or claim for payment for a prohibited self-referral, and any such 
unauthorized collections must be refunded to the payer or individual. Cross-referral 
arrangements also are prohibited.

Violations of the statute constitute grounds for disciplinary action by the applicable 
provider licensing board. In addition, any health care provider who engages in a 
prohibited self-referral, presents a bill or claim for service that the health care 
provider knows is prohibited, or fails to make a refund of any amount collected in 
violation of the statute is subject to a civil penalty of up to $20,000 for each bill or 
claim.

N.C. Gen. Stat. § 90-408—Exceptions for Underserved Areas
Self-referrals and cross-referrals are not prohibited if the North Carolina 
Department of Health and Human Services (NCDHHS) determines that there is a 
“demonstrated need” in the county for the entity receiving the referrals, and that 
alternative financing is not available “on reasonable terms from other sources.” The 
term “demonstrated need” is not defined in the statute, but is clarified in 
regulations. Determinations by NCDHHS under this section apply for five years 
from the date of issuance. Whenever a healthcare provider refers a patient to a 
health care facility outside that provider’s practice and in which the provider has a 
“legal, beneficial, or investment interest,” the provider must disclose the investment 
interest to the patient. Patients also must be provided with a list of effective 
alternative facilities if any become available, informed that they have the option to 
use one of the alternative facilities, and assured that the provider will not treat the 
patient differently if the patient chooses an alternative facility.

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² N.C. Gen. Stat. § 90-405(11). A “group practice” includes two or more physicians organized as a 
partnership, professional corporation, or similar association, in which: (1) each member physician of 
the group provides services; (2) all services of member physicians are provided through the group 
and billed in the name of the group; and (3) the overhead expenses of and the income from the 
practice are distributed in accordance with methods previously determined by member physicians. 
N.C. Gen. Stat. § 90-405(6). Other circumvention scheme shall be subject to a civil penalty of not 
more than $75,000 for each prohibited arrangement or scheme.

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Title 10A North Carolina Administrative Code § 14G.0100 et seq.—
Exemptions from Prohibitions of Self-Referrals by Health Care Providers for
Underserved Areas

Regulations related to the exception for underserved areas govern the form and
content of the applications that must be filed by health care providers seeking to fit
within the exception to the self-referral and cross-referral prohibitions contained in
N.C. Gen. Stat. § 406. To satisfy the “demonstrated need” requirement, NCDHHS
must verify that the proposed services are not provided in the county within 15
miles of either the proposed site of the entity or any existing provider located within
certain distances, depending on whether the entity is new or existing. NCDHHS
also must conclude that the existing provider is unable to provide services to all
who require the service and is unwilling to expand services. For NCDHHS to
determine that alternative financing is not available, the new entity must provide
documentation demonstrating attempts to obtain financing from commercial
lenders subject to certain conditions; that the plan of proposed financing is on
essentially the same terms as those proposed to commercial lenders; that any non-
health care providers shall participate under the same terms as those proposed for
the health care providers; and that an advertisement has been placed in four
successive Sunday editions of a regional daily newspaper by any proposed non-
health care owners, and no responses have been received.

Op. Att’y Gen.: Jones, September 27, 1993

A physician who has an investment interest in a privately owned nursing home is
not prohibited from prescribing nursing home care for some patients insured by
Medicaid, where the county places patients at nursing home facilities and where
the physician does not recommend a particular nursing home facility to the county.

Helpful Case Law:

*Jacobs v. Physicians Weight Loss Ctr. of Am., Inc.*, 620 S.E.2d 232 (N.C. Ct.
App. 2005)

**Case:** Clients of a weight loss center brought multiple claims against the center
and others, challenging the legality of a contractual arrangement for filling of
weight-loss drug prescriptions, including violation of N.C. Gen. Stat. § 90-406,
intentional interference with fiduciary physician-patient relationship, constructive
fraud, and unfair and deceptive trade practice. Written contracts provided that
clients would fill weight-loss drug prescriptions written by the center’s retained
physicians at the pharmacy designated by the center.

**Holding:** Statute that prohibits health care providers from referring patients to
entities in which the health care provider is an investor provides no private cause of
action to clients of weight loss center. No cause of action would be recognized for
alleged intentional interference with fiduciary physician-patient relationship, but
genuine issues of material fact existed on claims of constructive fraud and unfair
and deceptive trade practice.

**Case:** Hospital sought review of its denied certificate of need (CON) application for a magnetic resonance imaging scanner and the approval of an imaging center’s CON application. Hospital claimed that the state’s CON section erred in failing to find that the imaging center’s application was based on improper self-referrals in violation of N.C. Gen. Stat. § 90-406.

**Holding:** The authority to enforce the unlawful self-referrals statute is vested in the Attorney General (AG). Therefore, the state’s CON section has no authority to determine whether the imaging center violated the state’s self-referral law.

3) FALSE CLAIMS ACT/FRAUD & ABUSE


Generally, North Carolina’s False Claims Act (FCA) prohibits the following acts: (1) knowingly presenting or causing to be presented a false or fraudulent claim for payment or approval\(^3\); (2) knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim; (3) conspiring to commit a violation of the North Carolina FCA; (4) having possession, custody, or control of property or money used or to be used by the state and knowingly delivering or causing to be delivered less than all of that money or property; (5) having authorized to make or deliver a document certifying receipt of property used or to be used by the state and, intending to defraud the state, makes or delivers the receipt without completely knowing that the information on the receipt is true; (6) knowingly buying or receiving as a pledge of an obligation or debt, public property from any officer or employee of the state who lawfully may not sell or pledge the property; or (7) knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly concealing, or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the state. Violators are subject to treble damages, a civil penalty of up to $11,000 for each false claim, payment of the state’s costs, and attorneys’ fee awards when actions under the North Carolina FCA are brought by private citizens on the state’s behalf.\(^4\)

The statute allows for enforcement by the North Carolina AG or a private individual. Private qui tam plaintiffs are entitled to receive 15%–25%, of any recovery when

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\(^3\) A “claim” includes any request or demand, under a contract or otherwise, for money or property (regardless of whether the state has title to the money or property) that: (1) is presented to an officer, employee, or agent of the state; or (2) is made to another recipient if they money is to be spent or used to advance a state program or on the state’s behalf, and the state either provides or has provided any portion of the money or property requested or demanded or will reimburse that recipient for any portion of the money or property requested or demanded. N.C. Gen. Stat. §1-606(2). “Knowing” and “knowingly” are defined as: having actual knowledge of the information; acting in deliberate ignorance of the truth or falsity of the information; or acting in reckless disregard of truth or falsity of the information. N.C. Gen. Stat. §1-606(4).

the North Carolina AG intervenes in a false claims action and 25%–30% of any recovery if the AG declines to intervene.5

North Carolina FCA Review—Office of Inspector General State FCA Reviews
Under Fraud Enforcement and Recovery Act of 2009 (FERA) amendments to the federal FCA, a state can receive a ten-percentage-point increase in its share of any recoveries under the federal FCA if the state’s false claims law is determined to be at least as effective in rewarding and facilitating qui tam actions as the federal FCA. The U.S. Department of Health & Human Services (HHS), Office of Inspector General (OIG) reviewed North Carolina’s FCA in March 2011 and again in December 2016, and concluded that it was not as effective as the federal FCA.

N.C. Gen. Stat. §§ 108A-70.10–70.16—Medical Assistance Provider False Claims Act
Prohibits any provider of medical assistance under the Medical Assistance program from knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval, or knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved. Liability to the state, or a political subdivision, for each violation is between $5,000 and $10,000, plus treble damages for each false claim, costs of the civil action, interest on damages, and costs of the investigation. Penalties may be reduced to not less than two times the amount of damages if the provider cooperates with the fraud investigation. Intent to repay or any actual repayment is not a defense, but it can be considered in mitigation of the penalties assessed.

N.C. Gen. Stat. § 108A-63—Medical Assistance Provider Fraud
Defines provider fraud to include actions such as: knowingly and willfully making or causing to be made any false statement or representation of a material fact in application for payment; knowingly and willfully making or causing to be made any false statement or representation of a material fact in order for a provider or facility to qualify or remain qualified to provide assistance; and knowingly and willfully concealing or failing to disclose any fact or event affecting initial or continued entitlement to payment or amount of payment; knowingly and willfully solicit or receive any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in-kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item; and knowingly and willfully offer or pay any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in-kind to any person to induce such person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service, or to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item.

5 N.C. Gen. Stat. § 1-610.
**N.C. Gen. Stat. § 108A-64—Medical Assistance Recipient Fraud**
Defined as knowingly and willfully, and with intent to defraud, making or causing to be made a false statement, failing to disclose any condition in attempting to obtain medical assistance, or aiding or abetting another person to obtain anything of value that the person is not entitled to receive or to otherwise deliberately misuse a Medicaid identification card. Proof of intent to defraud does not require proof of intent to defraud any particular person. Violations are punishable as a Class 1 felony if the value of the assistance wrongfully obtained exceeds $400 or as a Class 1 misdemeanor if the value is $400 or less.

**N.C. Gen. Stat. § 97-88.3—Workers' Compensation Act: Additional Penalty for Health Care Providers**
This provision provides for, in addition to the general penalties for fraud outlined in North Carolina’s Workers’ Compensation Act (WCA),\(^6\) (1) an administrative penalty not to exceed ten thousand dollars ($10,000) for any health care provider who willfully or intentionally (1) submits charges for health care that was not furnished; (2) fraudulently administers, provides, and attempts to collect for inappropriate or unnecessary treatment or services; or (3) violates the provisions of Article 28 of Chapter 90 of the General Statutes\(^7\), and (2) an administrative penalty not to exceed $1,000 for any health care provider who willfully or intentionally: (1) fails or refuses to file required reports and records in a timely manner; (2) makes unnecessary referrals; and (3) knowingly violates the state’s WCA “with intention to deceive or to gain improper advantage of a patient, employee, insurer, or the Commission.” This statute provides a safe harbor for a “hospital that relies in good faith on a written order of a physician in performing health care services.”

**Title 10A North Carolina Administrative Code § 22F.0101 et seq.—Program Integrity: Scope**
Delegates authority to the state Division of Medical Assistance (DMA) to implement procedures for preventing, investigating, and disposing of cases involving fraud, abuse, or the use of medically unnecessary or medically inappropriate services. Includes authority to institute methods and procedures to receive and process complaints, perform investigations, recoup improperly paid claims, establish monitoring programs, and conduct administrative review. Provides authority for DMA to perform post-payment reviews and audits based on statistical sampling of claims. Requires Title XIX providers to retain records for a period of not less than five years from the date of service, unless state or federal law requires a longer time period.

**Title 10A North Carolina Administrative Code § 22F.0201 et seq.—Definition of Provider Fraud**
Addresses provider fraud and physical abuse of recipients under the state’s

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\(^7\) A penalty assessed by the Commission for a violation of this subdivision (3) is in addition to penalties assessed under N.C. Gen. Stat. § 90-407.
Medical Assistance program. Grants authority to the state DMA to monitor and investigate provider fraud, abuse, error, and overutilization. Requires DMA to investigate possible fraud, and refer all cases of reasonably suspected provider fraud or physical abuse of recipients to the state Medicaid Fraud Control Unit.

**Title 10A North Carolina Administrative Code § 22F.0301 et seq.—Definition of Provider Abuse**
Addresses provider abuse under the state’s Medical Assistance program. Provider abuse includes “any incidents, services, or practices inconsistent with accepted fiscal or medical practices which cause financial loss to the Medicaid program or its beneficiaries, or which are not reasonable or which are not necessary.” Examples of provider abuse include: separate billing for care and services that are part of an all-inclusive procedure or included in the per-diem rate; billing for services provided by an unauthorized or unlicensed person; and failure to provide the proper quality of care associated with accepted medical standards for the community. Sanctions for violations include the following administrative actions: probation with terms for continued participation in the program; recovery in full of any improper provider payments; imposition of a monitoring program to ensure corrective measures have been introduced; and recommendation of suspension or termination. The foregoing administrative actions are subject to the administrative review procedures described in Title 10A North Carolina Administrative Code § 22F.0400 et seq.

**Title 10A North Carolina Administrative Code § 22F.0401 et seq.—Agency Reconsideration Review**
Sets forth the administrative review procedures for tentative findings of provider abuse made under 10A North Carolina Administrative Code § 22F.0300 et seq. Providers can submit a request for reconsideration review within 15 working days following receipt of a tentative decision. If requested by the provider, a hearing is held within 20 calendar days following receipt of the request. The purposes of reconsideration include clarifying issues, exchanging information, reviewing investigative findings, considering mitigating factors, and reconsidering tentative decisions. The reconsideration review decision can be appealed to a hearing before an administrative law judge in accordance with the North Carolina Administrative Procedure Act, by filing a petition within 60 days following the receipt of the reconsideration review.

**Title 10A North Carolina Administrative Code § 22F.0601 et seq.—Recoupment**
Sets forth administrative sanctions and recoupment for improper Medicaid payments to providers. In addition to recoupment, provides for the following administrative sanctions: warning letters; suspension or termination from further participation in the Medicaid program; and probation. Also includes the following remedial measures: placing a provider on “flag” status, whereby the provider’s claims are remanded for manual review; and establishing a monitoring program not to exceed one year. Factors considered in the kind and extent of sanctions include:
seriousness of offense; number of violations; prior history; prior imposition of sanctions; length of violations; provider’s willingness to obey program rules; recommendations by the investigative staff or Peer Review Committees; and effect on health care delivery in the area.

**Title 10A North Carolina Administrative Code § 22F.0701 et seq.—Recipient Fraud and Abuse**

Governs recipient fraud and abuse related to the state’s Medical Assistance program. Includes suggestions for preventing overutilization of the Medicaid program, such as identifying over-utilizers by providing the recipient with an eligibility card indicating such, and warning providers to exercise caution in providing treatment to the recipient.

**Helpful Case Law:**

**Smith v. SmithKline Beecham Corp., No. 1:08CV511 (M.D.N.C. June 26, 2009).**

**Case:** Plaintiff employee alleged that she was discharged for complaining to her supervisors about the defendant company’s violations of various statutory provisions, including the Unfair and Deceptive Trade Practices Act (UDTPA), the Medical Assistance Program Act, and the Medical Assistance Provider False Claims Act. Although the employee was at-will, she claimed her allegations were viable claims for wrongful discharge in violation of public policy.

**Holding:** In North Carolina, an at-will employee may bring a claim for wrongful discharge in violation of public policy in cases involving activity that North Carolina law identifies for either express protection or express prohibition as a matter of important public policy. The plaintiff’s claim was dismissed because none of the statutory provisions cited expressly declares a public policy for purposes of this exception to North Carolina’s at-will employment rule.

**4) UNFAIR BUSINESS PRACTICES**

**N.C. Gen. Stat. § 90-701—Billing of Anatomic Pathology Services**

It is unlawful for any person licensed to practice medicine, podiatry, or dentistry to bill anyone “for anatomic pathology services in an amount in excess of the amount charged by the clinical laboratory for performing the service unless the licensed practitioner discloses conspicuously on the itemized bill or statement, or in writing by a separate itemized disclosure statement.” Items that must be disclosed include: the amounts charged; any other charge included in the bill; and the name of the licensed practitioner performing or supervising the anatomic pathology service. It also is unlawful for any hospital licensed in North Carolina to bill anyone for anatomic pathology services in an amount in excess of the amount charged by the clinical laboratory for performing the service unless the hospital discloses the following by a separate itemized disclosure statement: amounts charged by the laboratory for the professional anatomic pathology services; any other charge included in the bill; and the name of the licensed practitioner performing or supervising the service. These requirements do not apply to licensed practitioners.
performing or supervising anatomic pathology services. There also is an exclusion for hospitals or physician group practices, including employees and those under contract, providing or supervising anatomic pathology services and compensated by the hospital or physician group practice for the services. The respective state licensing boards with jurisdiction over practitioners may revoke or suspend the practitioner’s license or deny license renewal for a violation.

**N.C. Gen. Stat. § 75-1.1 et seq.—UDTPA**

Prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. Commerce includes all business activities, but does not include professional services rendered by a member of a learned profession.


The phrase “learned profession” in N.C. Gen. Stat. § 75-1.1 includes physicians, attorneys, clergy, and related professionals. Such professions are characterized by the need of unusual learning, the existence of confidential relations, and adherence to standards of ethics higher than that in the marketplace. Professional services rendered by members of learned professions are not, by nature, commercial activities.

**Advertising and Publicity—NCMB Position Statement**

Deceptive, false, or misleading advertising or publicity constitutes unprofessional conduct. The term “advertising” includes oral, written, and other communications disseminated by or at the direction of a licensee for the purpose of encouraging or soliciting the use of the licensee’s services. Physicians should avoid advertising that creates unjustified medical expectations, includes deceptive claims, or implies exclusive or unique skills or remedies. Statements that a physician has cured or successfully treated a large number of patients suffering a particular ailment are deceptive when they imply a certainty of results.

**Helpful Case Law**

**Jacobs v. Physicians Weight Loss Ctr. of Am., Inc., 620 S.E.2d 232 (N.C. Ct. App. 2005)** (See summary under **Prohibitions on Self-Referral**).

**N.C. State Bd. of Dental Exam’rs v. FTC, 717 F.3d 359 (4th Cir. 2013), cert. granted, 134 S. Ct. 1491 (2014).**

**Case:** In 2010 the Federal Trade Commission (FTC) issued an administrative complaint against the North Carolina State Board of Dental Examiners (NCSBDE) that charged NCSBDE with violating the FTC Act by directing non-dentists to stop providing teeth whitening services or products.

**Holding:** After a lengthy administrative and judicial review process, the Fourth Circuit denied NCSBDE’s petition for review of the FTC’s determination that NCSBDE violated the FTC Act. In doing so, the court determined that NCSBDE was not exempt from the antitrust law under the “state action” doctrine because NCSBDE is operated by dentists, hygienists, and consumers, which it deemed “market participants.” The court also held that concerted action existed when NCSBDE members, by agreement, deprived “the marketplace of independent
centers of decision making.” The U.S. Supreme Court granted NCSBDE’s petition for certiorari on March 3, 2014. Their review focused on the question of whether, for purposes of the state-action exemption from federal antitrust law, an official state regulatory board created by state law may properly be treated as a “private” actor simply because, pursuant to state law, a majority of the board’s members also are market participants elected to their official positions by other market participants.

**N.C. State Bd. of Dental Exam’rs v. FTC, 135 S. Ct. 1101 (2015)**
The Supreme Court affirmed, and held that the NCSBDE was not entitled to state action immunity, reasoning that when a controlling number of the decision makers on a state licensing board are active participants in the occupation the board regulates (six of the eight board members were dentists), the board can invoke state-action immunity only if it is subject to active supervision by the state. FTC staff issued a guidance document on the active supervision requirement in October 2015.

5) CORPORATE PRACTICE OF MEDICINE

**N.C. Gen. Stat. § 90-18—Requirements for Licensure as a Physician**
No person shall perform any act constituting the practice of medicine or surgery unless the person shall have been first licensed and registered so to do.

**N.C. Gen. Stat. §§ 55B-1 through -16—Professional Corporation Act**
Corporations that practice medicine must be owned entirely by licensed physicians or by a permissible combination of physicians and other health care providers. Exceptions include hospitals and health maintenance organizations.

Although for-profit corporations may not practice medicine or employ licensed physicians to do so, physicians may be employed by nonprofit or public hospitals.

**NCMB Position Statement—Corporate Practice of Medicine**
The North Carolina Medical Board takes the position that, with limited exception, businesses practicing medicine in North Carolina must be owned in their entirety by persons holding active North Carolina licenses. The Board may subject licensees providing medical services on behalf of businesses engaged in the corporate practice of medicine to disciplinary action and may seek injunctive relief against lay owners of such businesses. Whether a licensee of the Board is an employee or independent contractor is not determinative of whether a physician is aiding and abetting the corporate practice of medicine.

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The Board does recognize certain exceptions to the corporate practice of medicine, including non-profit hospitals and medical practices owned by such hospitals, health maintenance organizations, public health clinics, and charitable nonprofits.


NCMB considers the “revision, destruction, incision, or other structural alteration of human tissue using laser technology” to be surgery that should only be performed by physicians or licensed health care practitioners working within their professional scope of practice.

**In re: Henry William Traylor, M.D.—NCMB Consent Order**

NCMB determined that a physician-practice management fee was unethical fee-splitting, because the management company ensured itself that it would retain all revenue generated by physician services after operating expenses, professional salaries, and payments to the shareholder physician were deducted.

**In re: Gregory Robert Mesa, P.A.—C. NCMB Consent Order**

NCMB determined that a physician assistant unintentionally aided and abetted the unlicensed practice of medicine by providing medical services on behalf of a medical spa owned and operated by an unlicensed individual.

**Marcus Jimison, The Corporate Practice of Medicine, PROGNOSIS, Nov. 2006, at 9**

According to NCMB’s senior enforcement attorney, percentage-based compensation arrangements, in the context of management agreements, constitute unethical fee-splitting because these arrangements “convert medical management companies from simple service providers to de facto partners in the practices.

6) GENERAL WHISTLEBLOWER PROTECTIONS


Provides protection for employees to report unsafe and unlawful workplace conditions free from retaliatory action. An employee aggrieved by a retaliatory action may file a written complaint with the Commissioner of Labor (Commissioner). If the Commissioner is unable to resolve the alleged violation, the Commissioner may file a civil action on behalf of the employee or issue a right-to-sue letter to the employee. Remedies include: an injunction to enjoin the continued violation; reinstatement to the same position; reinstatement of full-fringe benefits and seniority rights; and compensation for lost wages, benefits, and other economic losses.
N.C. Gen. Stat. § 97-88.3(d)—WCA: Providing Information Regarding Health Care Providers
Provides protection from liability in a civil action for any person “who in good faith comes forward with information” under the section providing for penalties for false claims or other inappropriate activities related to the submission of claims by health care providers under North Carolina’s WCA.

Allows state employees, except for those subject to the employee appeals and grievance procedures provided pursuant to Section 8 of Chapter 126, to report activity by a state agency or state employee constituting: a violation of law; fraud; misappropriation of state resources; substantial and specific danger to the public health and safety; or gross mismanagement, gross waste of monies, or gross abuse of authority. Violations can be remedied by injunction, damages, reinstatement of the employee, payment of back wages, full reinstatement of fringe benefits and seniority rights, costs, and reasonable attorneys’ fees. For willful violations, remedies include an award of three times the amount of actual damages, plus costs and reasonable attorney’s fees.

7) HELPFUL LINKS
- North Carolina Department of Health and Human Services
- North Carolina Division of Medical Assistance
- North Carolina Attorney General’s Consumer Protection Division
- North Carolina Medical Board