

Turning a Blind Eye to History, and Reality

THE AMA LOVES TO KEEP FIGHTING, EVEN AFTER THE BATTLE IS LOST.

Editorial Staff

The American Medical Association, the most prominent supporter of the North Carolina State Board of Dental Examiners' defense of recent litigation brought to bear by the Federation Trade Commission,¹ is taking the Supreme Court's Feb. 25, 2015 decision exactly as it always does - by turning a blind eye to history, legal precedent and reality. That's nothing new, of course, just like its unsuccessful attempts to squash competition and circumvent law are nothing new.

The AMA posted the following statement on its website in the wake of the [court's ruling](#) that the N.C. board's actions to prevent non-dentists from performing teeth-whitening services constituted a violation of the Sherman Antitrust Act - a federal statute with which the AMA is intimately familiar.²

"The FTC is increasing its antitrust examination of state medical board and state legislative actions, particularly those concerning scope of practice. The [AMA] is concerned that these actions will chill the ability and willingness of state legislatures, regulators, and boards of medicine to initiate legislation, regulation, or other actions to protect the public for fear of potential antitrust liability.

"The AMA believes that the antitrust 'state action exemption' should be interpreted to protect the work of state professional boards. In particular, scope-of-practice actions of state medical boards are, and should be, immune from successful antitrust challenge under the antitrust state action exemption doctrine, even if the board consists primarily or entirely of practicing physicians. The AMA also believes the FTC must closely examine its ability to advocate on such complex medical issues as the relative competency of providers of perform certain medical procedures.

"Antitrust relief is a priority for physicians. The AMA stands ready to work with our state medical associations and national medical specialty societies to address this concerning trend of FTC engagement."³

While a number of other organizations filed briefs in support of the dental board, it is interesting to note that the American Nurses Association, the American Association of Nurse Practitioners, the American Association of Nurse Anesthetists, the American College of Nurse Midwives, and the National Association of Clinical Nurse Specialists filed briefs [supporting the FTC](#), contending that "active state supervision was needed for physician-dominated medical boards because they have a history of unfairly limiting the scope of practice for nurses."⁴

A history of unfairly limiting scope of practice - at this point, it's effectively written in bold letters across the AMA's forehead wherever it goes. Fortunately, the FTC and the courts are close behind, ready to teach the fading medical monopoly a history lesson whenever one is required.

References

1. "Striking a Blow to the Medical Monopoly; Landmark Supreme Court Ruling Puts State Boards on Notice." *Dynamic Chiropractic*, April 1, 2015.
2. "AMA Publishes Court Order, Revised AMA Opinion, and McAndrews Essay." *Dynamic Chiropractic*, Jan. 31, 1992.
3. "Federal Trade Commission (FTC) State Engagement." American Medical Association.
4. Lowes R. "Supreme Court Ruling Could Limit Medical Board Authority." *Medscape Medical News*, Feb. 25, 2015.

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