

DENTAL BOARD FALLOUT LITIGATION SNAPSHOT

(Any opinions, observations, or conclusions made herein are solely those of the attorneys at Allen & Pinnix, P.A.)

Case	State/Complaint Filing Date	Defendant(s)	Plaintiff(s)	Status of Case	Conduct at Issue	Damages Sought
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-licensees	N/A
Allibone v. Texas Medical Board	Texas (1/30/17)	Board and its members in their official and individual capacities	Licensee	Complaint filed; motion to dismiss granted in its entirety; appeal to 5th Circuit voluntarily dismissed	Horizontal restraint of trade, horizontal market reallocation, price fixing, monopoly	Unspecified treble damages
Axcess Medical v. MS State Bd. of Medical Licensure	Mississippi (4/24/15)	Board and 10 John Does	Clinic's licensee and non-licensee owners	Stipulation of dismissal	Rules limiting non-licensees from owning clinics	Unspecified treble damages
Ballinger v. OH State Board of Registration for Professional Engineers and Surveyors	Ohio (11/__/14)	Board and various third parties	Disciplined licensee (pro se)	Dismissed for lack of jurisdiction and failure to state a claim	Dissatisfied client colluded with the Board in violation of the Sherman Act	Unspecified treble damages
Barry v. State Bar of California	California (5/2/17)	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 and dismissed due to filing deficiencies; second complaint with same allegations filed; dismiss with prejudice 10/5/17	Sherman Act violations; Constitutional claims, including violations of the First Amendment and various due process allegations	Unspecified treble damages

Case	State/Complaint Filing Date	Defendant(s)	Plaintiff(s)	Status of Case	Conduct at Issue	Damages Sought
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-licensee	Sherman Act portion of case stayed pending resolution of a related state case; 2nd amended complaint filed with no antitrust claims	Citation of and levying fine on attorney who sold his clients' toy trains in online auctions	Unspecified monetary damages
Bauer v. Pa. State Bd. of Auctioneer Examiners [state case]	Pennsylvania (10/15/15)	Board (respondent)	Attorney non-licensee	Petition for review of an order of the Board; Board's order affirmed; appeal denied	Citation of and levying fine on attorney who sold his clients' toy trains in online auctions	Not available
Coestervms.com, Inc. v. VA Real Estate Appraiser Bd.	Virginia (8/3/15)	Board and its members (official capacity)	Applicant	Voluntarily dismissed	Recommendation that licensure be denied due to past conduct	No monetary damages
Colindres v. Battle	Georgia (8/12/15)	Exec. Director of Georgia Board of Dentistry (official capacity) and its members (individual and official capacities), Attorney General	Non-licensee and her company	Complaint filed seeking declaratory and injunctive relief and treble damages; voluntarily dismissed	Harassment and threats by the Board against a non-licensed teeth whitener; no formal enforcement action taken	Unspecified treble damages
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	No monetary damages
Colorado Real Estate Commission v. Vizzi	Colorado (__/__/17)	Disciplined licensee	Commission	Commission's order affirmed	Violation of federal antitrust law and due process rights	Unknown

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Conrad v. Beshear Conrad v. Bevin	Kentucky (7/17/17)	Attorney General, Governor, Board, Executive Director, etc.	Licensee	Complaint filed seeking injunctive relief and damages; injunctive relief denied; motion to dismiss granted	Board's emergency hearing, which resulted in suspension of plaintiff's license; federal and state antitrust violations; constitutional claims	Unspecified compensatory and punitive damages
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; stay denied; motion for summary judgment filed 11/30/18	Regulation restricting specialty advertising; Constitutional and antitrust claims	No monetary damages
DeJong v. Idaho State Bd. of Medicine	Idaho (11/15/17)	Board	Disciplined licensee	Complaint seeking monetary damages and voiding of discipline ; voluntarily dismissed 4/5/18	Out-of-state doctor with an Idaho license was disciplined for practicing in-state telemedicine; restraint of trade in violation of the Sherman Act	\$1 million
Express Lien, Inc. v. Cleveland Metropolitan Bar Association	Louisiana (7/9/15)	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-licensee	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	Unspecified treble damages

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Henry v. NC Acupuncture Licensing Board	North Carolina (10/7/15)	Board and its members (official capacities and seemingly individual 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; settled in mediation 2/28/19	Anticompetitive conduct in excluding physical therapists who perform dry needling from the market; violation of due process	Unspecified treble damages
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; N.C. Supreme Court affirmed 5/11/18	Review of final agency decision; restraint of trade in violation of the Sherman Act and N.C. Constitution	No monetary damages

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In re La. Real Estate Appraisers Board	FTC (5/30/17)	Board (respondent)	N/A	Administrative complaint filed; motion to dismiss denied 4/10/17; petition for review filed with 5th Cir. 4/19/18; FTC denied motion to stay administrative proceeding 6/6/18; administrative proceeding stayed by 5th Cir. 7/17/18; 5th Cir. determined appeal was premature 2/28/19; stay of FTC proceedings lifted 3/21/19; petition for rehearing denied by 5th Cir. 4/10/19; Board filed complaint against FTC in M.D. La. 4/11/19; FTC determined Board may be entitled to good-faith regulatory compliance defense 5/6/19; FTC proceeding stayed by M.D. La. 7/29/19	Anticompetitive conduct re: adoption of a fee-setting rule	N/A
La. Real Estate Appraisers Board v. FTC	5th Circuit Petition for Review (4/9/18)	FTC (respondent)	Board (petitioner)			
SEE RELATED CASE BELOW: La. Real Estate Appraisers Bd. v. FTC in M.D. La.						

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Jemsek v. NC Medical Board	North Carolina (2/2/16)	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; 4th Cir. affirmed per curiam	Boycott, price fixing, monopolization, restraint of trade as the result of Medical Board's disciplinary actions re: licensee's treatment of Lyme disease	No monetary damages
Julien v. GA Board of Dentistry	Georgia (10/12/17)	Board and its members (individual and official capacities), executive director (official capacity), attorney general (official capacity)	Non-licensee	Complaint filed; motion to dismiss filed 1/19/18	Exclusion of non-dentists from teeth whitening services; restraint of trade and competition; monopolization and attempted monopolization; constitutional violations	Unspecified treble damages
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 "vexatious litigant" list	Case was dismissed based on immunity under the 11th Amendment; 9th Cir. affirmed 12/28/17; cert. denied by Supreme Court 11/13/18	Alleged anticompetitive disciplinary proceedings by the California Bar	Unspecified general and special damages
La. Real Estate Appraisers Board v. FTC SEE RELATED CASE ABOVE: In re La. Real Estate Appraisers Board	Louisiana (4/11/19)	FTC	Board	Complaint filed; motion to dismiss filed 6/7/19; motion to stay administrative proceeding granted 7/27/19	Violations of the Administrative Procedure Act; seeks declaration that Board has state-action immunity	Declaratory relief; dismissal of Administrative Complaint

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Leeds v. Bd. of Dental Examiners of Alabama	Alabama (10/12/18)	Board and its members (individual and official capacities)	Licensee and company providing non-clinical support services	Complaint filed; TRO granted 10/15/18; amended complaint filed 11/14/18; motion to dismiss granted to Board as a whole and Board members in their individual capacity <u>without prejudice</u> ; defendants' motion to stay granted 4/29/19; both sides filed notices of appeal	Alleged antitrust violations ; Board exceed its authority when ruling the plaintiffs could not practice in the state	Declaratory and injunctive relief; no treble damages sought
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	Over \$10.5 million in trebled damages
Manookian v. Flippin	Tennessee (4/29/19)	Members of the TN Board of Professional Responsibility (individual and official capacity)	Licensee	Complaint filed; motion to dismiss filed 6/11/19	Temporary suspension of licensee w/o bringing any disciplinary charges; constitutional and antitrust violations	Injunctive relief; actual, punitive and unspecified treble damages
Petrie v. VA Bd. of Medicine	Virginia (12/3/13)	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 11/28/16	Discipline of a licensee for unauthorized practice	Unspecified treble damages

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Rivera-Nazario v. Corporacion del Fondo del Seguro del Estado	Puerto Rico (7/3/14)	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	Not less than \$3 million in trebled damages
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	Unspecified treble damages
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; 5th 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	Unspecified treble damages

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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 ; 2nd amended complaint filed w/ no antitrust claims against the Florida Bar	Grievance committee and Florida Bar were active market participants; their investigation of the plaintiff's conduct was not actively supervised	Unspecified treble damages
SmileDirectClub, LLC v. Ga. Board of Dentistry	Georgia (5/21/18)	Board, its members & executive director	Non-licensee	Complaint filed; motion to stay granted 7/5/18; motion to dismiss granted as to the Board and denied as to the members in their official capacities 5/8/19; appeal filed 6/7/19; amicus brief by DOJ & FTC filed 9/25/19	Board approved amendments to rule adding digital scans to duties that may be performed by a dental assistant; Board's actions were unsupervised; sought declaratory & injunctive relief	Unspecified treble damages
Strategic Pharmaceuticals Solutions, Inc. v. NV 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-kickback regulation	Unspecified treble damages

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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 was stayed until 11/30/17; stipulation of dismissal filed 11/29/17	Promulgation of rules restricting telemedicine practice and requiring a “face-to-face or in-person evaluation”	Injunction-only case, no monetary damages sought
TIKD Services LLC v. Florida Bar	Florida (11/8/17)	Bar and its president, executive director, unlicensed practice of law counsel et al.	Non-licensee	Complaint filed; amended complaint filed; motion for sanctions filed; four individual defendants dismissed; motions for summary judgment filed; claims against ticket clinic law firm dismissed 9/27/18	Federal and state antitrust claims; monetary and injunctive remedies sought	At least \$11.4 million in trebled damages
Turner v. Va. Dept. of Medical Assistance Services	Virginia (W.D.) (11/15/16)	Va. state agency, third-party plan administrator, and competitors	Licensee	Complaint filed; motions to dismiss granted; motion to amend complaint denied 5/4/17	Antitrust; tortious interference with contract and economic advantage	Unspecified treble damages

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Turner v. Va. Dept. of Medical Assistance Services	Virginia (E.D.) (7/26/17)	Va. state agency, third-party plan administrator, and competitors	Licensee and his professional corporation	Complaint filed; motions to dismiss granted	Antitrust (Sherman Act); tortious interference with contract and economic advantage	Unspecified treble damages
Veritext Corp. v. Bonin	Louisiana (8/17/16)	Members of the La. Bd. of Examiners of Certified Shorthand Reporters in their official and individual capacities	Certified Delaware corp. that offers court-reporting services in La.	Complaint filed; 5th Cir. affirmed dismissal of constitutional claims, but dismissal of Sherman Act claim was error	Antitrust and constitutional claims; complaint sought declaratory relief, injunctive relief and damages	Unspecified treble damages
Wallen v. St. Louis Metropolitan Taxicab 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 licensor	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; deadline for filing dismissal papers passed without anything filed	Restraint of trade, preventing Uber and similar companies from entering the market	Unspecified treble damages
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; joint motion for dismissal filed 8/29/17	Restraint of trade; monopolization on hearing aid market via a difficult-to-pass practicum test and harassment of plaintiffs	Unspecified treble damages

OTHER RECENT LITIGATION WITH STATE ACTION SIGNIFICANCE

Case	State/Complaint Filing Date	Defendants	Plaintiffs	Status of Case	Conduct at Issue
Alarm Detection Systems, Inc. v. Orland Fire Protection District	Illinois (2/7/14)	Fire protection district and a competitor	Fire alarm installation and monitoring company	Complaint filed; district court granted motions to dismiss on all counts; notice of appeal filed 9/5/18	Anticompetitive conduct in violation of Sherman and Clayton Acts; constitutional violations
Alemu v. Dep't of For-Hire Vehicles	District of Columbia (9/15/17)	D.C. agency; owner of taxicab-related companies	Taxicab drivers	Complaint filed; D.C. district court granted motions to dismiss; notice of appeal filed 9/28/18	Attempts to monopolize and conspiracy to monopolize the D.C. taxicab market
Allyn v. American Board of Medical Specialties, Inc.	Florida (7/11/18)	Medical specialties boards	Medical doctors	Complaint and motion to dismiss filed; magistrate judge recommended granting motion to dismiss; maj. judge recommendations approved 1/23/19	Restraint of trade in violation of Sherman Act; restraint of trade and monopolization in violation of Florida antitrust law; unfair and deceptive trade practices
AmeriCare Med Services, Inc. v. City of Anaheim	California (9/9/16)	City; ambulance services providers	Ambulance service	12 complaints filed in federal district court by the same plaintiff were consolidated and motion to dismiss granted; 9th Circuit affirmed 8/27/18, petition for cert. filed 1/15/19	Monopolization of the emergency services market
Bd. of Professional Responsibility v. Reguli	Tennessee (3/2/15)	Licensee	Board	Hearing panel decision affirmed; antitrust issue waived since it was not raised in the trial court or before the hearing panel	Licensee misconduct; Constitutional and antitrust issues
Campbell v. Othoff	North Dakota (10/16/15)	Commissary operator, sheriff, jail personnel, director of N.D. Dept. of Corrections	Prisoner	Motion to dismiss granted	Constitutional and antitrust violations

Case	State/Complaint Filing Date	Defendants	Plaintiffs	Status of Case	Conduct at Issue
Century Aluminum of S.C., Inc. v. S.C. Public Service Authority	South Carolina (1/27/17)	Non-profit electrical power corporation	Aluminum smelting company	Motion to dismiss granted; appealed to 4th Cir., where it was voluntarily dismissed 10/9/18	Federal and state antitrust violations, unfair and deceptive trade practices
Disciplinary Counsel v. Tamburrino	Ohio (6/6/16)	Licensee	Board	Objections made to disciplinary action were denied; reconsideration denied; certiorari denied 5/22/17	Licensee misconduct; constitutional issues
Gonzalez v. Dept. (Bureau) of Real Estate	California (11/24/15)	State real estate agency, agency investigators; agency directors and counsel; agency commissioner	Disciplined licensee	Complaint filed; Dept. of Real Estate dismissed due to 11th Amendment immunity; appeal to 9th Cir. dismissed for lack of jurisdiction 4/25/18	Licensee revocation; federal antitrust and constitutional violations
KJAMS, LLC v. Ford Motor Co.	Ohio (6/3/16)	Ford Motor Co. & Ohio Motor Vehicle Dealers Bd.	Dealership	Dismissed and remanded to the Board for further action	Authority of Board to act when only one public member was available to take action
Lasher v. Neb. State Board of Pharmacy	Nebraska (9/29/17)	Board, Director of Neb. Div. of Public Health, Neb. Dept. of Health & Human Services	Disciplined licensee/prisoner	Complaint dismissed for failure to state a claim; aff'd by 8th Cir. 1/31/19	Revocation of license due to criminal conviction; constitutional violations
Murphy-Dubay v. Dept. of Licensing & Regulatory Affairs	Michigan (10/18/13)	Umbrella agency and its director	Applicant	Plaintiff did not have right to a hearing since his "self-made" application was not denied by the agency; application for leave to appeal denied by Michigan Supreme Court; certiorari denied by SCOTUS 10/3/16	Laws and rules regarding residency requirement
Patel v. TX Dept. of Licensing & Regulation	Texas (12/___/09)	Umbrella licensing agency, its executive director, umbrella commission and its members	Non-licensees	Licensing agencies lost; requirement requiring license was unconstitutional	Enforcement and potential enforcement against non-licensees

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Salt River Project Agricultural Improvement & Power District v. SolarCity Corp.	Arizona (3/2/15)	Solar panel business	State electrical power district	U.S. Supreme Court granted petition for certiorari re: whether orders denying state action immunity to public entities are immediately appealable; petition dismissed 3/22/18 following settlement by the parties	Antitrust violations (Sherman and Clayton Acts)
Seaman v. Duke University	North Carolina (6/9/15)	Duke University (although not a party, UNC was named as a co-conspirator)	Employee	Complaint filed; motion to dismiss denied; defendants' motion for permission to appeal denied by the 4th Circuit 6/3/16; Duke Univ. filed summary judgment motion 12/21/18	Suppression of employee compensation and restrictions on employee mobility; federal and state antitrust claims
Sensational Smiles, LLC v. Mullen	Connecticut (11/16/11)	Public health commissioner and members of the Board	Unlicensed entity and its unlicensed operator	Board won; rational reasons existed for the limitation; antitrust was not at issue; SCOTUS denied petition for cert. 2/29/16	Rule restricting teeth whitening to licensed dentists
Serven v. Health Chiropractic, Inc.	Michigan (1/6/16)	Michigan Board of Chiropractic, its chairman, and two disciplinary subcommittee members	Disciplined licensee	Circuit court denied board members' motion for summary disposition; court of appeals reversed based on quasi-judicial immunity and remanded for further proceedings	Malicious prosecution, tortious interference with business relationships; constitutional claims
Siva v. American Bd. of Radiology	Illinois (2/26/19)	National medical certification board	Certified radiologist	Complaint filed; motion to dismiss filed 6/27/19	Class action; antitrust violations, including Sherman Act Sections 1 & 2
Texas v. Melton	Texas (7/13/16)	Non-licensee	State on behalf of the Texas Bd. of Professional Engineers	Case was remanded back to state court for lack of federal subject matter jurisdiction	Unauthorized practice of engineering; collection of penalties

Case	State/Complaint Filing Date	Defendants	Plaintiffs	Status of Case	Conduct at Issue
Walwyn v. Bd. of Professional Responsibility of the Supreme Court of TN	Tennessee (12/3/15)	Board of Professional Responsibility	Suspended licensee	Hearing panel judgment affirmed	Constitutional claims; attempted to bring in antitrust claim using supplemental authority