

Supreme Court Held That The North Carolina Dental Board Was Subject to Antitrust Laws



With the Supreme Court's groundbreaking decision in the *North*

Carolina State Board of Dental Examiners v. Federal Trade Commission, [Law360](#) and [Reuters](#) news agency quote firm managing partner Harry Nelson on the impact of the decision. In a 6-3 decision, the Court held that the North Carolina Dental Board was subject to antitrust laws for its efforts to close down teeth-whitening businesses that were not owned and operated by dentists.

The Federal Trade Commission (FTC) initiated the case after the teeth-whitening businesses that closed after receiving cease-and-desist letters from the Board complained that they operated safely and that opposition from dentists was anti-competitive. They challenged the Dental Board's claim that teeth-whitening constituted the "practice of dentistry," which meant that it could only occur under the rules governing the dental profession, which limit the ownership, scope of activity of different personnel according to their licensure, and supervision requirements. Writing for the majority, Justice Anthony Kennedy noted the fact that dental licensing board composed primarily of dentists are active market participants who run the risk of self-dealing when they police their own industry.

Asked to assess the impact of the decision, [Harry Nelson](#) commented: "The Supreme Court's ruling is promising for both consumers and the entrepreneurs and companies whose ventures have been hampered and in many cases shut down by overly restrictive definitions of what constitutes the practice of dentistry or medicine. Teeth whitening is the tip of the iceberg. Many new dental and medical services and devices have been designed to be perfectly safe in the hands of unlicensed people, yet are limited by boards to ownership and operation by licensed professionals. The weight loss and aesthetic marketplaces are full of examples. While professional licensing boards have an important role to play in protecting consumer health and safety from the genuine dangers of patient injuries, boards nationwide have overboard in regulating safe devices where the only possibility of harm is professionals needing to compete. We are hopeful that this decision will lead to a relaxation of regulation that will be good for consumers and entrepreneurs alike."

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