
GOVERNMENTAL IMMUNITY - SOUTH CAROLINA

Health Promotion Specialists, LLC v. South Carolina Bd. of Dentistry

Supreme Court of South Carolina - June 12, 2013 - S.E.2d - 2013 WL 2631075

Company, which provided preventative dental care to children in schools and which employed dental hygienists who contracted with supervising dentists, brought action against Board of Dentistry, seeking damages resulting from Board's regulation imposing restrictions on hygienists' work in schools.

The Supreme Court of South Carolina held that:

- Company was not entitled to amend complaint to add claim for conspiracy to violate South Carolina Unfair Trade Practices Act (SCUTPA);
- Under Tort Claims Act (TCA), Board was immune from company's tort claims; and
- For purposes of SCUTPA, Board's promulgation of emergency regulation did not constitute "trade or commerce."

Under TCA, Board of Dentistry was immune from tort claims that were asserted by company employing dental hygienists and that arose from Board's emergency regulation requiring clinical examination of patient by supervising dentist within 45 days before hygienist could perform preventative dental care for patient in school setting. Board's promulgation of emergency regulation constituted legislative or quasi-legislative act that was protected from liability under TCA.

For purposes of SCUTPA, Board of Dentistry's promulgation of emergency regulation concerning restrictions on dental hygienists' provision of preventative dental care to children in school setting did not constitute "trade or commerce," and thus Board did not violate SCUTPA. Promulgation of regulation did not involve advertisement, sale, or distribution of services or property within business context.

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