

MEETING NOTICE

Emergency Medical Services Regulatory Board Executive Committee (EC)

Thursday, June 18, 2015, 10:00 a.m. – 12:00 p.m.

University Park Plaza
Conference Room A, 4th Floor
[Map-Directions-Parking](#)

Proposed Agenda

1. **Call to Order** – J.B. Guiton, Board Chair – 10:00 a.m.
2. **Approve Agenda** – J.B. Guiton

Motion: To approve the agenda for the June 18, 2015 Executive Committee meeting.

3. **Approval of EC Meeting Minutes**

- April 16, 2015 Executive Committee Minutes EC-A1

Motion: To approve the Executive Committee meeting minutes for April 16, 2015.

Approval to Move May 21, 2015 Draft Board Minutes to July 2015 Board Meeting Consent Agenda

- May 21, 2015 Draft Board Meeting Minutes EC-A2

Motion: To move May 21, 2015 draft board minutes to consent agenda for the July 16, 2015 Board meeting.

4. **Public Comment** – J.B. Guiton

Information

The public comment portion of the Executive Committee meeting is where the public may address the Executive Committee on subjects which are not part of the meeting agenda. Persons wishing to speak must sign-in on the participation form provided at the meeting room door prior to the start of the meeting. Please limit remarks to 3 minutes. The Executive Committee will listen attentively to comments but, in most instances, will not respond at the meeting. Typically, replies to issues or concerns expressed will be made via letter or phone call within a week and in some cases referred to the full Board.

5. **Board Chair Report** – J.B. Guiton

- Status of New Board Appointments (Current Applications) Information

6. **Executive Director Updates** – Tony Spector

Attachments

- Agency Budget Update EC-A3
- Data Practices – Designation of Responsible Authority EC-A4
- State District Court Records Access EC-A5
- U.S. Supreme Court Case – Impact on Regulatory Agencies EC-A6
- Legislation – HF 423 – Discussion with MAA Information
- Regional System Grant Contracts – FY 2016 & 2017 Information
- Cooper/Sams Volunteer Award Program – Update Information
- Volunteer Education Reimbursement – Update EC-A7

7. **New Executive Committee Business** – J.B. Guiton

8. **Adjourn** – J.B. Guiton – 12:00 p.m.

Next Executive Committee Meeting: Thursday August 20, 2015, 10:00 a.m.

Attachment Key:

EC-A = Executive Committee Attachments

Report = Information Provided Verbally at Board Meeting and May Include a Document

If you plan to attend the meeting and need accommodations for a disability, please contact Melody Nagy at (651) 201-2802. In accordance with the Minnesota Open Meeting Law and the Internal Operating Procedures of the Emergency Medical Services Regulatory Board, this meeting notice was posted at: <http://www.emsrb.state.mn.us>

EC-A1

Draft Meeting Minutes

**Emergency Medical Services Regulatory Board
Executive Committee (EC)
Thursday, April 16, 2015, 10:00 a.m.
University Park Plaza
Conference Room A, 4th Floor**

Attendance: J.B. Guiton, Board Chair, Megan Hartigan, Jeffrey Ho, M.D. Matthew Simpson
Robert Norlen, Interim Executive Director, Greg Schaefer, Assistant Attorney General
Tony Spector (Guest/New Executive Director)

1. Call to Order – J.B. Guiton, Board Chair

Mr. Guiton called the meeting to order at 10:02 a.m.

2. Approve Agenda – J.B. Guiton

Mr. Guiton said that he would also be discussing an EMT class for the New Executive Director.

Motion: Dr. Ho moved to approve the agenda for the April 16, 2015 Executive Committee meeting with the addition. Mr. Simpson seconded. Motion carried.

3. Approval of EC Meeting Minutes

Motion: Ms. Hartigan moved to approve the Executive Committee minutes from February 19, 2015. Dr. Ho seconded. Motion carried.

Approval to Move March 19, 2015 Draft Board Minutes to Board Meeting Consent Agenda

Motion: Mr. Simpson moved to approve the March 19, 2015, Board minutes to the consent agenda for the May 21, 2015, Board meeting. Dr. Ho seconded. Motion carried.

4. Public Comment – J.B. Guiton

The public comment portion of the Executive Committee meeting is where the public may address the Executive Committee on subjects which are not part of the meeting agenda. Persons wishing to speak must sign-in on the participation form provided at the meeting room door prior to the start of the meeting. Please limit remarks to 3 minutes. The Executive Committee will listen attentively to comments but, in most instances, will not respond at the meeting. Typically, replies to issues or concerns expressed will be made via letter or phone call within a week and in some cases referred to the full Board.

No public comment received.

5. Board Chair Report – J.B. Guiton

• Recognition of Out-Going Board Members

Mr. Guiton said that plaques will be provided to outgoing Board members. He will also be asking these members to attend the July Board meeting to provide mentoring to new Board members.

• Status of New Board Appointments

Ms. Jill Ryan Schultz and Mr. Simpson have applied for another term on the Board. Mr. Norlen said he had a conversation with Lorna Schmidt, Executive Director for the Local Public Health Association of MN to discuss the open position for Local Board of Health member. Mr. Guiton said that we do not know when the Governor will make the appointments.

"To protect the public's health and safety through regulation and support of the EMS system."

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- Trauma System Joint Policy Committee:

Mr. Norlen said this committee was formed when the trauma system was put in place. Its purpose is to coordinate the activities of the trauma system between the Minnesota Department of Health (MDH) and the EMSRB. The committee has not met for a couple of years. This committee makes appointments to Regional Trauma Advisory Committees and EMS should be involved. Mr. Guiton said he has been asked to approve two regional trauma committee members. Most meetings are very short and can occur by phone or email. The EMSRB needs three members. Mr. Guiton said that he would attend the meetings in his role as chair. Dr. Ho and Ms. Hartigan offered to participate (one year commitment). Mr. Norlen suggested one face-to-face meeting so that the members could be introduced to the MDH members.

Mr. Norlen said the Board received recommendations relating to trauma systems from the American College of Surgeons site-visit in 2007 and discussed the EMS related recommendations, but did not take specific actions on these recommendations other than to table them for future consideration.

- EC Review of Current IOP (Internal Operating Procedures):

Mr. Guiton complimented the format revisions to the IOP. He said that he would like this copy to be posted as soon as it is finalized. He asked for discussion of any changes needed. The most recent change was the elimination of the legislative and finance committees. Mr. Guiton said that the intention was that those committees would be rolled into one meeting. The treasurer position was eliminated. The vice chair will continue to lead legislative initiatives.

Ms. Hartigan said that a treasurer may not be needed as long as we have good financial reports. She offered to assume the title of secretary/treasurer. Mr. Guiton agreed. He suggested a change to IOP.

Motion: Dr. Ho moved to add the title and duties of treasurer to the secretary position.
Mr. Simpson seconded. Motion carried.

Mr. Guiton asked that discussion of the IOP be added to the agenda for the May Board meeting.

- Certification Follow-up:

Mr. Guiton indicated the Board was seriously concerned that we would need to extend the date for certifications by two months. I am very happy to report that everything was completed within the timeline and phone calls were returned, problems solved. Ms. Hartigan said that the amount of work that was accelerated was incredible and appreciated. Board members will be having an appreciation lunch with staff for their hard work during the renewal time. No Board business may be discussed during this event so that there will not be a problem with open meeting law.

- EMT Course for New Executive Director:

Mr. Guiton said as part of the hiring process the committee discussed that EMT experience and involvement was important. A condition of hiring was that the candidate takes the EMT course. Mr. Tony Spector is present at the meeting today for this discussion. Mr. Guiton said that Mr. Spector has 18 months to complete this requirement.

Mr. Spector said he is trying to become familiar with his duties as the new Executive Director and has researched several choices for his EMT course. He wants a program that would allow him time in the office. He researched a program available at the University of Minnesota.

Dr. Ho said we want the Executive Director to have this knowledge. HCMC has an executive style EMT course that is work at your own pace and test out for skills.

Mr. Spector said his part time job as a sheriff deputy involved assistance at scenes. He said that he wants the skills of a functional EMT. Ms. Hartigan said that you are an ideal candidate for a blended course. Mr. Spector said I do not want to wait on things that are a requirement of my position. I want to be able to participate at conferences as an EMT. Show the legitimacy of the position. This will assist my skill sets in many ways. Mr. Norlen will be available during the transition time. Mr. Spector said he wants to meet with all Board members. Mr. Spector said he wants to show support for the St. Paul program. Mr. Simpson said whatever program you pick would be ideal. Mr. Spector suggested auditing the St. Paul program. Mr. Guiton said that the decision is for Mr. Spector to make.

Mr. Guiton provided a newsletter to Mr. Norlen that discusses practical testing for paramedics. He said that Minnesota may need to make some changes and this should be discussed for a legislative recommendation. Mr. Guiton also shared a newsletter that provides information on a model of licensure for EMTs. This could be a discussion for licensing of paramedics.

6. Interim Executive Director Updates – Robert Norlen

▪ Agency Budget Update:

Mr. Norlen provided a budget overview document. We have projected expenses and projected extra “spend down” funds. There are funds that cancel and funds that carry forward. We will spend the money that cancels first. We have obligations for \$100,483.99 and have some discretionary funds to spend. We have approximately \$87,000 to spend. We are looking at office remodeling and a proposal for computer equipment for Board meetings.

Mr. Norlen said he would like to have Ms. Juli Vangness of the Administrative Services Unit (ASU) present information to the Board on the budget at the next meeting.

▪ Cooper/Sams – Vol. Award Program:

Mr. Norlen provided a handout to Board members and said all the payments were made by March 31. Information is posted on the EMSRB website.

▪ Volunteer Education Reimbursement:

Mr. Norlen said at the March meeting we discussed volunteer education reimbursement. One of the items mentioned is that the Board needs to look at the funds remaining. We are getting fewer applications. This is a trend that may be related to ongoing issues of recruitment/retention of volunteers.

Mr. Norlen said we reviewed the statute and evaluated how the applications are processed. The EMT refresher course costs more than \$275.00 per student. An initial EMT course costs more than \$600.00. We have been asking for receipts for training and mileage. We have been holding the reimbursements for lack of receipts. The statute says “may” ask for receipts. The recommendation is to make the changes as noted in the overview and streamline the processing of the reimbursement. A policy in the past was that a paramedic taking an EMT refresher course was not paid. Mr. Norlen said a “volunteer paramedic” taking the EMT refresher course should also receive this payment. Mr. Guiton suggested that we can add reimbursement for part-time ALS. Mr. Norlen agreed. Dr. Ho provided a correction to the language (add may).

Mr. Norlen said the payment is made to ambulance services. Payment is once every two years upon completion of the renewal cycle. Mr. Guiton thanked staff for getting the money to the ambulance personnel.

Mr. Guiton asked that a discussion of volunteer education reimbursement occur at the July Board meeting if there would need to be proposed changes to statutory language.

Mr. Norlen said we revised the form on the website. We are following up on incomplete applications and returning the applications that need additional information or do not meet the requirements.

Mr. Norlen said he will be tracking these changes to see if more money is spent. He said that he wants to focus on making sure these important reimbursement funds get distributed to as many volunteers as possible and limit barriers to appropriate reimbursement requests. Mr. Norlen also suggested looking into increasing the amounts of reimbursements to volunteer EMTs if we continue a downward trend in the number of reimbursement requests. Mr. Norlen asked if the committee has any issues with the actions to improve and streamline the processes for requesting VER reimbursement. Mr. Guiton complemented staff on their efforts to improve processes in this area.

- Certification/Licensure Update:

Mr. Norlen said the staff did great work to meet the March 31 deadline. We are planning an internal team debrief of this year's certification process in the next few weeks.

- Quarterly Board Metrics (process)

Mr. Norlen provided a handout. This is an overview of what the metric means. The third quarter information is not completed yet. The exception is the regional grant information. This is a measurement of performance. I want to make sure the Board understands what is being measured. If there is additional information the Board wants we need to provide this information.

Ms. Hartigan said if there is something that is included that is being measured that is not needed we should make a change. Mr. Norlen said that the ambulance reporting metric will not change. Every license will be done in the same time frame each year this is a statutory requirement. Mr. Guiton said we were told that we did not have enough staff to handle licensing. There should be stretch and there should be victories.

Mr. Norlen said workload is affected by the functions in the metrics. Mr. Spector said that this provides transparency.

Dr. Ho left the meeting at 11:50 a.m.

Mr. Norlen said the team processed sixty four (64) reimbursement requests for regional system/program payment during the time period of January to March. He said the days have decrease as of February 25, due to the staff team work to make improvements in processing and approving the grant reimbursement requests. By the fourth quarter we will not have numbers in the red. The completed quarterly report will be provided in the May Board packet.

- Ebola Funding Legislation

Mr. Norlen said he does not have a handout. \$148,000 is being appropriated by the legislature. I have had a meeting with Minnesota Department of Health (MDH) staff to define what "extraordinary costs" are. We will meet with MDH and MAA to discuss this. We want to be in agreement on how the funds will be distributed. The EMSRB will need to enter into contracts to distribute the funds. More information will be provided at the May Board meeting.

- MNSTAR Data (DPSAC)

Mr. Norlen provided a handout with a recommendation to re-establish DPSAC. The membership when the committee was put on hiatus is listed on the attachment. He said we will need to recruit members. He provided a charge for the committee for discussion. Mr. Norlen said that he will be having conversations with Border States on NEMSIS 3.0 requirements. Mr. Guiton said that we should discuss recruitment of members at the May Board meeting. Mr. Norlen said that he will have a report and recommendations for the May meeting.

- Staff Hiring (SW EMS Specialist)

Mr. Norlen said the position for the Southwest EMS Specialist, as authorized by the Board at the March 19th meeting, is posted and closes April 24th. This posting was provided to ambulance services, education programs and other interested parties. He asked if a Board member wishes to participate on the interview team. Mr. Guiton said that Board members could participate if asked. Ms. Hartigan said that we trust the staff team.

- Office Equipment & Office Space Updates

Ms. Nagy and Mr. Popp are working with contractors to discuss changes to the office space. We will work with ASU (Administrative Services Unit) to develop the contracts. Further updates will be provided.

- Share-Point and Laptop Computers for Board Members

Mr. Norlen said there are two options available. We can have a share-point site for Board members and provide confidential information to Board members on that site. There are costs involved in bringing this technology to the Board. Other boards are purchasing laptops or IPADS for Board members. We are looking at Surface Pro computers (\$16,000 approximate cost) and there would be a yearly cost for Board members to have an email address (\$15 per Board member per year). The second choice is “drop box” – which would be a \$5,000 yearly cost. Mr. Norlen said he would recommend share-point and the state owned computers for Board members along with state e-mail addresses. The move to this type of technology would significantly reduce workload in specific areas for staff and improve Board access to important and necessary communication and documents for review and meeting preparation.

Mr. Simpson left the meeting at 12:15 p.m.

Mr. Guiton said he would agree with the first recommendation. He said that this should be discussed at the May Board meeting. Mr. Schaefer said a significant purchase would need to be approved by the Board. He asked if there is any requirement in the IOP.

Mr. Norlen noted there would be a need for training for Board and staff for using this technology.

Mr. Guiton said we will provide this as an informational piece at the May meeting and we will provide full Board disclosure to Board members of the Executive Committee decision. Mr. Guiton directed staff to make this purchase due to limited time to make the decision.

- Legislation – HF 423:

Mr. Norlen indicated the legislation under HF 423 (*Ambulance service staff requirement variance eliminated, alternative ambulance staffing allowed, and licensed ambulance service allowed in limited areas to accept full mutual aid support on a part-time basis*) passed and was enacted into law on March 27, 2015 (handout provided). Mr. Norlen provided talking/thinking points and said that there are concerns related to regulation and language conflicting with other statutes. He asked for comments and would like to share the talking/thinking points with the Minnesota Ambulance Association (MAA) for comments and suggestions as well.

Mr. Guiton said it's our job to follow the statute. If hardship variances would have been processed rapidly this would not have occurred. Ms. Hartigan said that we may need clean up language next year. Mr. Guiton said that this should be on the May agenda.

- Regional System Grant RFP – FY 2016 & 2017

Mr. Norlen said we have the question/answer document posted. A conference call was held on April 14, 2015 with the potential grantees. Proposals are due April 30. All questions are being answered within 24 hours. Mr. Norlen said recommendations for contract awards will be an

agenda item for the May Board meeting. He asked that members be prepared for a longer Board meeting due to presentations and discussion about the proposals.

7. Committee Chair Discussion – J.B. Guiton

- Committee Chair Appointments: MDSAC, HPSP, CRP

Mr. Guiton will need to make the committee appointments. Ms. Hartigan is on the advisory committee for the Health Professionals Service Program (HPSP). If you are on the CRP it makes good sense if you are on both the HPSP and CRP. Ms. Hartigan said she would be glad to serve on the HPSP committee on an interim basis. MDSAC all of the physicians that are on the Board should be there. Mr. Simpson should continue to chair the CRP. Dr. Burnett said he would consider chairing the MDSAC.

8. New Executive Committee Business – J.B. Guiton

None.

9. Adjourn – J.B. Guiton

The meeting adjourned without a quorum. (12:35 p.m.)

Next Executive Committee Meeting: Thursday June 18, 2015, 10:00 a.m.

Meeting Minutes

EC-A2

Emergency Medical Services Regulatory Board

Thursday, May 21, 2015, 10:00 a.m. – 2:00 p.m.

University Park Plaza
Conference Room A, 4th Floor

Attending: J.B. Guiton, Board Chair, Aaron Burnett, M.D., Jennifer Deschaine, Steve DuChien, Mark Dunaski, Megan Hartigan, Jeff Ho, M.D., Michael Jordan (by phone), Paula Fink-Kocken, M.D., Mark Schoenbaum, Jill Ryan Schultz, Matthew Simpson, Mari Thomas, M.D.

Robert Norlen, Interim Executive Director, Greg Schaefer, Assistant Attorney General

Absent: Representative Jeff Backer, Lisa Consie, Patrick Coyne, Scott Hable, Senator Kathy Sheran

Call to Order – (10:00 a.m.) – J.B. Guiton, Board Chair

Mr. Guiton called the meeting to order at 10:04 a.m. Mr. Guiton announced that it is National EMS Week. Dr. Fink-Kocken said yesterday was EMSC Day.

Approve Agenda – J.B. Guiton

Motion: Ms. Deschaine moved to approve the agenda for the May 21, 2015 Board meeting. Dr. Fink-Kocken seconded. Motion carried.

Consent Agenda – J.B. Guiton

All items listed under the consent agenda are considered to be routine by the EMSRB and will be enacted by one motion and an affirmative vote by a majority of the members present. There will be no separate discussion of these items unless a Board member requests to remove an item from the consent agenda and then the item will be considered a separate subject of discussion.

Approve Board Minutes:

- March 19, 2015

Motion: Mr. DuChien moved to approve the Consent Agenda for the May 21, 2015 Board meeting. Mr. Simpson seconded. Motion carried.

Recognition of Retiring Board Members – JB Guiton

Mr. Guiton presented plaques to Representative Dan Schoen, Jennifer Deschaine, and Mari Thomas, M.D. He thanked these members for their service to the Board.

Public Comment – J.B. Guiton

The public comment portion of the Board meeting is where the public may address the Board on subjects which are not part of the meeting agenda. Persons wishing to speak must complete the participation form provided at the meeting room door prior to the start of the meeting. Please limit remarks to 3 minutes. The Board will listen attentively to comments but, in most instances, will not respond at the meeting. Typically, replies to issues or concerns expressed will be made via letter or phone call within a week.

Representative Schoen said that it was an honor to serve the Board. He said that he wanted to express some disappointment that the regional programs did not move to the Minnesota Department of Health (MDH). He said he was concerned about the grant dollars and how they are used and the priorities of the Board.

The State is at 97 percent funding for seat belts. He said that he would like to work with EMSRB staff to look at regional program administration. It was discussed that this funding could be permanent. The future of regional programs will require further discussion and there may be auditing needed. (Legislative Auditor). Some legislators are upset including the Governors' office. I wish the people who decided to withdraw the legislation had spoken to me.

Mr. Guiton said that Mr. Schoenbaum of MDH was very professional and accepting of this change. I do not know if we have the right answer, but we will have further discussion. Mr. Schoenbaum said that EMS is a high priority for MDH and we will work on efforts with staff.

Rep. Schoen said we want to protect the integrity of the Board and the industry.

Board Chair Report – (10:30 a.m.) -- J.B. Guiton

- Retiring Staff Member

Mr. Guiton said that Ms. Biladeau retired as of May 9, 2015. He said that he wanted to thank her for the time and work she put in as the Executive Director for the EMSRB.

- DPSAC Membership (handout provided)

Mr. Guiton said that we want to reinstate the Data Policy Standing Advisory Committee (DPSAC). He asked if any Board member wants to participate. We need this committee for many reasons including data requests. Mr. Norlen has had conversations with the potential members listed on the handout.

Mr. Norlen said that he has had conversations with MAA and EMSC for membership candidates. Mr. Norlen said that we can run NEMSIS 2.2 and 3.0 at the same time. This is an easy change for ImageTrend.

Motion: Mr. Jordan moved to approve the non-Board member appointments to DPSAC. Mr. Simpson seconded. Motion carried.

- HPSP Committee Member

Mr. Guiton said that Ms. Hartigan is willing to fill the position on a temporary basis. She also is the representative for MAA. Ms. Deschaine said that the committee met yesterday and this meeting can occur by conference call. This is a quarterly meeting.

Mr. Guiton said that this appointment will occur in July and Ms. Hartigan will fill the position on a temporary basis. (no motion was made)

- Revised Internal Operating Procedures (IOP) (handout provided)

Mr. Guiton said that the revised IOP is provided in the Board packet. The format has been changed and improved. The treasurer position was eliminated. The Executive Committee has proposed a secretary/treasurer position.

Mr. Schoenbaum asked what the duties of the treasurer were previously. The language was provided. Mr. Guiton said a monthly financial report is available and the treasurer duties will include review of the monthly financial report.

Mr. Norlen said that in the previous IOP the Legislative and Finance committees were eliminated. The treasurer would provide a financial report to the Board monthly in conjunction with the Executive Director.

Mr. Schoenbaum said we should review this document again in six months or a year. It should be done before the legislative session. The current IOP calls for a Board review each even numbered year. It was suggested to change this to each calendar year.

Motion: Ms. Ryan-Schultz moved to approve the revised IOP and post it to the EMSRB website. Dr. Ho seconded. Motion carried.

Regional Systems/Programs FY16 & FY17 Grant – (11:00 a.m.) -- J.B. Guiton

- Presentations by Regional System/Program Grant Applicants
 - *Each Applicant is Allowed 10 Minutes to Present to the Board*
Regional Program Director's present at the meeting declined to speak to the Board. (Regions represented at meeting: Arrowhead EMS Association, Central Minnesota EMS Region Joint Powers Board, Metropolitan Emergency Service Board, and Southeastern Minnesota EMS Region Joint Powers Board. Regions not present at meeting: Greater Northwest EMS, Inc., South Central Minnesota EMS Region Joint Powers Board, Southwest Minnesota EMS Corporation, and West Central Minnesota EMS Corporation.

Mr. Guiton said that staff did a great job of getting this RFP out on time. The grant contract begins July 1, 2015. The law did not change so the regional programs remain with the EMSRB.

- Conflict of Interest Declaration – Greg Schaefer, Assistant Attorney General
Minnesota Statute [144E.01, subdivision 7](#), provides: No member of the Emergency Medical Services Board may participate or vote in board proceedings in which the member has a direct conflict of interest, financial or otherwise.

Mr. Schaefer said if Board members have a direct conflict of interest they should not vote. Ms. Deschaine asked about an RFP for research projects that may occur in the future. Mr. Schaefer said that would not be an obstacle for this vote.

Dr. Ho said that he provides medical directions for two agencies in the regions. Dr. Ho declared a conflict for the Metro and Southwest region.

Mr. DuChien said that he is a representative of a regional program. Mr. Schaefer said that this is not a direct conflict that you are a member. Mr. Schaefer said that we want to be aware of perception of a conflict.

Dr. Burnett said he has received funding from research projects in the past. Mr. Schaefer said it is good to disclosure this and it may not impact this vote. He suggested that Dr. Burnett recuse for Metro regional program vote. Mr. Guiton said that he would recuse for voting on all contracts. Dr. Thomas said that she must recuse for the Central region.

Mr. Schaefer referred to the IOP page 6 the code of conduct and asked members to review this information.

Mr. Spector said he participated in the review of the proposals and wanted to disclose law enforcement involvement with Southwest region.

- Recommendations from RFP Review Committee
Mr. Norlen said the goals overview from the RFP is provided as a handout. Mr. Norlen said that the members of the review committee are included in the handout. He thanked the members of the review committee. A detailed review of the proposals submitted is included in the board materials.
- Board Action on RFP Proposals:

Ms. Deschaine moved to accept the grant proposal from the Arrowhead EMS Association to be designated as the Regional System grantee for FY 2016-FY 2017 in the Northeast Region upon execution of a signed grant contract. Dr. Fink-Kocken seconded. A roll call vote was taken. Mr. Guiton and Mr. DuChien recused and the motion carried.

Discussion: Mr. Schoenbaum noticed there were some conditions that are outlined in the handout and inquired if they had been met. Mr. Norlen confirmed that some additional clarification was sought and conditions have now been met prior to the Board meeting today.

Dr. Fink-Kocken moved to accept the grant proposal from the Central Minnesota EMS Region Joint Powers Board to be designated as the Regional System grantee for FY 2016-FY 2017 in the Central Region upon execution of a signed grant contract. Ms. Ryan Schultz seconded. A roll call vote was taken. Mr. Guiton and Dr. Thomas recused and the motion carried.

Mr. DuChien moved to accept the grant proposal from the Greater Northwest EMS, Inc. to be designated as the Regional System grantee for FY 2016-FY 2017 in the Northwest Region upon execution of a signed grant contract. Dr. Thomas seconded. A roll call vote was taken. Mr. Guiton recused and the motion carried.

Dr. Fink-Kocken moved to accept the grant proposal from the Metropolitan Emergency Service Board to be designated as the Regional System grantee for FY 2016-FY 2017 in the Metro Region upon execution of a signed grant contract. Ms. Deschaine seconded. A roll call vote was taken. Mr. Guiton, Dr. Ho, and Mr. Simpson recused and the motion carried.

Dr. Ho moved to accept the grant proposal from the South Central Minnesota EMS Region Joint Powers Board to be designated as the Regional System grantee for FY 2016-FY 2017 in the South Central Region upon execution of a signed grant contract. Dr. Burnett seconded. A roll call vote was taken. Mr. Guiton recused and the motion carried.

Dr. Thomas moved to accept the grant proposal from the Southeastern Minnesota EMS Region Joint Powers Board to be designated as the Regional System grantee for FY 2016-FY 2017 in the Southeast Region upon execution of a signed grant contract. Ms. Ryan Schultz seconded. A roll call vote was taken. Mr. Guiton recused and the motion carried.

Discussion: Dr. Ho asked about TNCC training for nurses. Mr. Norlen said this is supporting EMS in hospitals.

Ms. Ryan Schultz moved to accept the grant proposal from the Southwest Minnesota EMS Corporation to be designated as the Regional System grantee for FY 2016-FY 2017 in the Southwest Region upon execution of a signed grant contract. Dr. Thomas seconded. A roll call vote was taken. Mr. Guiton and Dr. Ho recused and the motion carried.

Dr. Ho moved to accept the grant proposal from the West Central Minnesota EMS Corporation to be designated as the Regional System grantee for FY 2016-FY 2017 in the West Central Region upon execution of a signed grant contract. Mr. Jordan seconded. A roll call vote was taken. Mr. Guiton recused and the motion carried.

Mr. Guiton thanked staff. Mr. Norlen said that he would be seeking comments on process improvement. The Board may want to have further discussion on the basis of Rep. Schoen's comments. This discussion will need to occur sooner rather than later. The grantees are established regions and need to be part of this discussion.

Mr. Jordan said that this is an excellent point and this should be an agenda item for the July meeting. He suggested inviting Rep. Schoen to this discussion.

Committee Reports

- **Complaint Review Panel (CRP) – Mr. Simpson**
Mr. Simpson said that the CRP is busy and staff prepares the cases brought to the Board. He thanked Rose Olson for her work on this. He said we have HPSP referrals and actions to take today in closed session. We handle the cases and provide a message for public protection.
- **HPSP Report – Ms. Deschaine**
Ms. Deschaine said that the committee met yesterday and discussed a policy for media relations. The Board does not speak on behalf of HPSP. Media inquiries should be referred to the Executive Director of HPSP. Conference call meetings were discussed and require a 10 day public notice. EMSRB has 18 enrollees. Additional information is provided on their website.

Interim Executive Director Report – (12:30 p.m.) -- Robert Norlen

- **Agency Budget Presentation – Juli Vangsness, Administrative Services Unit**
Mr. Norlen said an updated handout was provided in the packet and was posted to the website yesterday. Mr. Norlen is pleased to have Ms. Vangsness here to present information to the Board. She is going to provide an overview of the EMSRB budget and is able to answer questions.

Ms. Vangsness said she has been with the Health Related Licensing Boards for a long time and was part of the migration for EMSRB. This Board has four funding sources. She provided more details about the information on the worksheet. She said this is a year that any funds not spent by June 30 cancel to general fund. If a fund does not cancel it can carry forward. This funding is monitored daily and she meets with staff monthly. The EMSRB pays a fee to ASU for services provided. EMSRB can pre-pay for services for ASU for the next fiscal year if there are funds remaining.

Mr. Guiton said this information is provided to each Board each month. Ms. Vangsness said she can provide more data or less data or other information. Please let her know what the Board would like to see.

Dr. Ho asked if we will be \$15,000 over. Ms. Vangsness said we are over budget but the numbers in the encumbrance change as the year closes. We will have cushion in some accounts. If there is any money left on June 30 it can go to the ASU contract. Two years ago we pre-paid the extra to the ASU contract. Mr. Guiton thanked Ms. Vangsness for her presentation.

Mr. Simpson left the meeting.

(Lunch 12:00 p.m.)

- Quarterly Board Metrics / Definitions

Mr. Norlen provided a definitions document to accompany the quarterly Board metrics. He said he specifically wanted to discuss the regional grant metrics (item 4). He noted the decrease in length of time for processing of grant reimbursement. We have instituted a process improvement. Mr. Norlen said he will be working with Mr. Spector during the transition on other metrics needed.

Mr. Guiton asked about metric five regarding passing rates for EMTs. Mr. Norlen said this information is provided by National Registry. The EMS Education Standards Transition Workgroup will be discussing this and the workgroup will be meeting soon.

Mr. Jordan thanked staff for the definitions. He said he needs this information for discussion for the Executive Director's evaluation that will happen in May. This will give Mr. Spector clear direction on what he will be accountable for. Mr. Guiton suggested that this discussion occur at the July meeting.

- Volunteer Education Reimbursement

Mr. Norlen said a Volunteer Education Reimbursement handout was provided. This information is as of May 14. We are at 75% of the dollars spent today. If no more applications were received we would need to redistribute funds to Regional Programs.

Mr. Norlen said he wanted to provide more detail on the process improvement of this program. The Board may want to consider some options for this program. This would include a discussion of recruitment and retention. We are losing volunteers. The reduced number of applications reflects this trend. We reimburse \$275 for refresher training and \$600 for an initial course. The cost for attending the course is always higher than the reimbursement amount. If a paramedic is a "volunteer" they can be paid for this renewal.

Mr. Norlen said he is making a recommendation for a change to the statute. Information is provided in the handout. We will need to discuss future funding of the program. We may want to consider changing the reimbursement amount. We can provide comparison information on other years funding spent.

- HF 423 (Ambulance Staffing / PSA Coverage)

Mr. Norlen said a statutory change was made relating to ambulance staffing requirements. Staff has reviewed this statutory change. This was not brought forward by EMSRB.

Mr. Norlen said BLS services may determine staffing levels without completing a variance or informing the EMSRB. Mr. Norlen said he wanted the Board to be aware of the regulatory implications. (see handout provided) This is our staff interpretation. We will have recommendations for changes to this later. We want minimum staffing requirements for

ambulance services. The standard should be changed in statute so as to not have a conflict in statute. We can provide proposed legislative language.

Ms. Deschaine asked for the definition of “community”. Mr. Norlen said the metro region is exempt. This applies to populations of 2,500. This allows those communities to provide part time ambulance service. Mr. Schoenbaum said that “community” should be defined. Mr. Norlen said that this was not EMSRB language. We will have an opportunity to make this more clearly defined and statutorily correct.

Mr. Guiton said that the EMSRB was not responding to requests expediently or this would not have occurred and Mr. Norlen has corrected this customer service issue.

Mr. Norlen said this allows an ambulance to not provide coverage for 12 hours. From a regulatory standpoint this may cause some problems. This would allow border states to provide regular service in Minnesota. This also conflicts with other Minnesota statutes. He provided the thinking/talking points that can be used to discuss this with ambulance services. We want to protect the citizens of the communities who are using this option. We want to have further discussion with MAA on this statute change.

Dr. Ho left at 1 p.m.

Ms. Deschaine asked if there are services who intend to use this option. Mr. Norlen said ambulance services are not required to report this to the State. The goal was to have ambulances work together better.

Mr. Snoke said that this was not a MAA bill. It was brought forward by a legislator. Mr. Snoke said that he would like to have a conversation with staff on this topic. The response time in rural areas is different than drive time. We also want to discuss definitions of ambulance personnel. Mr. Norlen said that he wanted the Board to be aware of this change and we will work with MAA on any proposed change.

- MNSTAR – NEMSIS Version 3 (Border States)

Mr. Norlen said Wisconsin will be moving to NEMSIS 3.0 by January 2016. They will be keeping their system open for services that have not made this transition yet. There will be a year for transition. This gives Minnesota the opportunity to make this change. We may want to do something similar in Minnesota.

Mr. Schoenbaum said there should not be a problem in making this change. He thought it could be discussed at DPSAC.

- Ebola Funding Legislation

Mr. Norlen said this legislation passed and the EMSRB received \$148,000 for ambulance services. Staff will be working with MDH to receive the money and develop criteria for ambulance services to apply for the money. I will provide a further report when available.

- Southwest EMS Specialist Hire

Mr. Norlen said at the March meeting he made recommendations for hiring an EMS Specialist for the Southwest region. The Board authorized this hiring. We completed the hiring process. The person hired is Patrick W. Lee and his employment begins June 10.

- Computer Equipment for Board Members

Mr. Norlen said a spreadsheet is provided for the Board. Most of the other health licensing boards are providing computers to Board members. Information will be provided on Sharepoint

to assure security. Board members will need to have a state email address to access the Sharepoint site. This would allow us to have computers for 5 years. The annual cost is \$285 for email accounts for each Board member.

Mr. Guiton said that the Executive Committee made this decision and the funds are encumbered in the current fiscal year. Mr. Spector said that confidential information can be provided and secured. Mr. Norlen said this will also provide staff time efficiencies in distributing information.

- **Office Remodeling**

Mr. Norlen said we will be doing some renovation to our office space. We have been a Board for 20 years and moved here with equipment from MDH that we will be replacing and we will be painting and carpeting the office. Mr. Guiton said that money is in the current budget.

New Board Business – J.B. Guiton

Mr. Guiton asked the retiring Board members to come to the July board meeting to mentor the new board members.

Mr. Norlen said that we need a motion to accept the regional grant proposals and enter into the contracts.

Motion: Ms. Deschaine moved to accept the regional grant proposals and grant permission for the executive director to sign the contracts. Dr. Thomas seconded. A roll call was vote taken and the motion carried.

Closed Session*– (1:30 p.m.) – J.B. Guiton

*Closed per Minnesota Statutes [144E.28, subdivision 5](#) and Minnesota Statute 13D.05, Subdivision 2(b) (*Complaint Reviews*) or Minnesota Statutes [13D.05, Subd. 3\(2\)](#) (*Personnel Matters*)

Disciplinary Actions were discussed and voted on by Board members.

Re-Open Meeting – J.B. Guiton

Mr. Guiton re-opened the meeting.

Other New Business

Dr. Fink-Kocken said she was asked to look at certification of community paramedic programs. She said Dr. Wilcox was asked to be involved in this discussion. She will provide a report at a future meeting.

The Community EMT legislation passed. There is no curriculum and EMSRB staff should not create this curriculum.

Mr. Norlen thanked the Board for the opportunity to serve and the confidence to provide this information to the Board. We want to make EMS better. The dedication of the Board members to the agency is appreciated.

Adjourn – (2:00 p.m.) – J.B. Guiton

Motion: Dr. Thomas moved to adjourn at 2 p.m. Ms. Deschaine seconded and the Motion carried.

Next Board Meeting: Thursday July 16, 2015, 10:00 a.m.

EMSRB BUDGET SUMMARY

as of 5/31/2015

	Budget	Expended	Encumbered	Available		Available funds to spend before 6/30/15
OPERATIONS						
BOARD MEMBER EXPENSE OPERATIONS	\$27,266.38	\$7,469.75	\$9,409.39	\$10,387.24	cancels on 6/30/15	\$10,387.24
EMS OPERATIONS	\$1,097,826.98	\$861,488.64	\$234,073.50	\$2,264.84	cancels on 6/30/15	\$2,264.84
REGIONAL GRANTS ADMIN OPERAT	\$32,320.39	\$27,492.72	\$4,574.07	\$253.60	cancels on 6/30/15	\$253.60
LONGEVITY OPERATIONS	\$99,899.24	\$75,114.80	\$9,044.44	\$15,740.00	cancels on 6/30/15	\$15,740.00
EMSC PARTNERSHIP INDIRECT COST	\$3,719.00	\$1,831.74	\$1,887.26	\$0.00	can carry forward	
MRCC ADMINISTRATIVE COSTS	\$88,556.66	\$59,266.72	\$6,323.08	\$22,966.86	can carry forward	
TOTAL OPERATIONS	\$1,349,588.65	\$1,032,664.37	\$265,311.74	\$51,612.54		\$28,645.68

MISCELLANEOUS - ESTIMATED RECEIPTS

REQUEST FOR DATA-MISC RECEIPTS	\$191,542.18	\$21,093.18	\$0.00	\$170,449.00	can carry forward
SPECIAL DONATIONS - GIFT FUND	\$10,758.32	\$0.00	\$0.00	\$10,758.32	can carry forward
TOTAL MISCELLANEOUS	\$202,300.50	\$21,093.18	\$0.00	\$181,207.32	

REGIONS

STATE EMS REGIONAL GRANTS	\$585,000.00	\$508,580.10	\$76,419.90	\$0.00	cancels on 6/30/15
SEAT BELT GRANTS	\$909,317.44	\$444,667.41	\$464,650.00	\$0.03	
TOTAL REGIONS	\$1,494,317.44	\$953,247.51	\$541,069.90	\$0.03	

GRANTS / CONTRACTS

AMBULANCE TRAINING GRANTS	\$423,243.70	\$320,671.84	\$100,371.84	\$2,200.02	cancels on 6/30/15
MED RESOURCE COMMUNICATION CTR	\$614,700.00	\$507,261.00	\$107,439.00	\$0.00	
EMSC PARTNERSHIP	\$255,131.57	\$150,191.55	\$35,373.02	\$69,567.00	ends 2/28/2015
TOTAL GRANTS/CONTRACTS	\$1,293,075.27	\$978,124.39	\$243,183.86	\$71,767.02	

LONGEVITY

AWARDS	\$740,814.95	\$740,814.95	\$0.00	\$0.00	cancels on 6/30/15
TOTAL LONGEVITY	\$740,814.95	\$740,814.95	\$0.00	\$0.00	

Projected Budget Spending - Remainder of FY 2015	\$91,104.00
Total*	
*Includes HPSP charges, severance payouts, space updates, software	



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EC-A4

Board Resolution

State of Minnesota

Emergency Medical Services Regulatory Board

Under the provisions of Minnesota Statutes, section **13.02**, Subdivision 16, as amended, Tony Spector is hereby appointed Responsible Authority for Emergency Medical Services Regulatory Board.

Tony Spector is hereby authorized to take all actions necessary to assure that all programs, administrative procedures and forms used by the Emergency Medical Services Regulatory Board are administered in compliance with the provisions of Minnesota Statutes, chapter 13, as amended, and with rules as lawfully promulgated by the Commissioner of Administration and published in the State Register.

ADOPTED BY THE EMERGENCY MEDICAL SERVICES REGULATORY BOARD ON JULY __, 2015.

ATTESTED TO:

J.B. Guiton
Board Chair

MASTER SUBSCRIBER AGREEMENT FOR MINNESOTA COURT DATA SERVICES

THIS AGREEMENT is entered into by and between

_____ ,
 (Subscriber Name / Name of Entity)
 of _____ ,
 (Subscriber Address)

(hereinafter "Subscriber") and THE STATE OF MINNESOTA

Office of State Court Administration
 _____ ,
 (Judicial District OR Office of State Court Administration)
 of 25 Rev. Dr. Martin Luther King Jr. Blvd. St. Paul, Minnesota 55155 ,
 (Address)

(hereinafter "the Court").

Recitals

Subscriber desires to use one or more Court Data Services to assist Subscriber in the efficient performance of its duties as required or authorized by law or court rule.

The Court desires to provide Court Data Services to Subscriber to assist the Court in the efficient performance of its duties as required or authorized by law or court rule.

Court Data Services are defined in the Definitions Section of this Agreement and may involve a one-way or two-way transmission of information between the parties, some of which may include court information that is not accessible to the public and which may not be disclosed by Subscriber without the prior approval of the appropriate court or record custodian.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Court and Subscriber agree as follows:

1. TERM; TERMINATION; ONGOING OBLIGATIONS. This Agreement shall be effective on the date executed by the Court and shall remain in effect according to its terms. Either party may terminate this Agreement with or without cause by giving written notice to the other party. The effective date of the termination shall be thirty days after the other party's receipt of the notice of termination, unless a later date is specified in the notice. The provisions of sections 5 through 9, 12.b., 12.c., and 15 through 24 shall survive any termination of this Agreement as shall any other provisions which by their nature are intended or expected to survive such termination. Upon termination, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof. This Agreement may be superseded by a subsequent agreement between the parties.

2. DEFINITONS.

a. **“Court Data Services”** means one or more of the following services and includes any additional or modified services identified as such on the Justice Agency Resource webpage of the Minnesota Judicial Branch website or other location designated by the Court and/or its affiliates, as the same may be amended from time to time by the Court and/or its affiliates:

- i. **“Bulk Data Delivery”** which means the electronic transmission of Court Records in bulk form from the Court to the Subscriber, from one or more of the Court’s databases and through any means of transmission, as described in applicable Request Forms, Policies & Notices, and materials referenced therein.
- ii. **“Integration Services”** which means a pre-defined automated transmissions of i) Court Records from the Court’s computer systems to Subscriber’s computer systems; and/or ii) Subscriber Records from the Subscriber’s computer systems to the Court’s computer systems; on a periodic basis or as triggered by pre-determined events, as described in applicable Request Forms, Policies & Notices, and materials referenced therein.
- iii. **“MNCIS Login Accounts”** which means a digital login account created for and provided to the Subscriber for online access to and use of Court Records, through the Minnesota Court Information System (MNCIS), as described in applicable Request Forms, Policies & Notices, and materials referenced therein.
- iv. **“ViBES Login Accounts”** which means a digital login account created for and provided to the Subscriber for online access to and use of Court Records, through the Violations Bureau Electronic System (ViBES), as described in applicable Request Forms, Policies & Notices, and materials referenced therein.

b. **“Court Data Services Databases”** means any databases, and the data therein, used as a source for Court Data Services, together with any documentation related thereto, including without limitation descriptions of the format or contents of data, data schemas, and all related components.

c. **“Court Data Services Programs”** means any computer application programs, routines, transport mechanisms, and display screens used in connection with Court Data Services, together with any documentation related thereto.

d. **“Court Records”** means all information in any form made available by the Court and/or its affiliates to Subscriber for the purposes of carrying out this Agreement, including:

- i. **“Court Case Information”** means any information in the Court Records that conveys information about a particular case or

controversy, including without limitation Court Confidential Case Information, as defined herein.

- ii. **“Court Confidential Case Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that conveys information about a particular case or controversy.
 - iii. **“Court Confidential Security and Activation Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that explains how to use or gain access to Court Data Services, including but not limited to login account names, passwords, TCP/IP addresses, Court Data Services user manuals, Court Data Services Programs, Court Data Services Databases, and other technical information.
 - iv. **“Court Confidential Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access, including without limitation both i) Court Confidential Case Information; and ii) Court Confidential Security and Activation Information.
- e. **“DCA”** means the District Court Administrator pursuant to Minnesota Statutes, section 485.01.
- f. **“Policies & Notices”** means the policies and notices published by the Court and/or its affiliates in connection with each of its Court Data Services, on a website or other location designated by the Court and/or its affiliates, as the same may be amended from time to time by the Court and/or its affiliates. Policies & Notices for each Court Data Service, hereby made part of this Agreement by reference, provide additional terms and conditions that govern Subscriber’s use of such services, including but not limited to provisions on fees, access and use limitations, and identification of various third party applications such as transport mechanisms that Subscriber may need to procure separately to use Court Data Services.
- g. **“Rules of Public Access”** means the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time, including without limitation lists or tables published from time to time by the Court and/or the SCAO entitled Limits on Public Access to Case Records or Limits on Public Access to Administrative Records, all of which by this reference are made a part of this Agreement. It is the obligation of Subscriber to check from time to time for updated rules, lists, and tables and be familiar with the contents thereof. It is contemplated that such rules, lists, and tables will be posted on the main website for the Court, for which the current address is www.courts.state.mn.us.
- h. **“Request Form”** means the form or forms as substantially set forth as Exhibit A, which is attached to and made a part of this Agreement, describing one or more specific requests for Court Data Services offered by the Court and corresponding Records to be transmitted or exchanged under such offering, as the same may be amended from time to time by the Court.

i. “SCAO” shall mean the State of Minnesota, State Court Administrator's Office.

j. “Subscriber Records” means any information in any form made available by the Subscriber to the Court and/or its affiliates for the purposes of carrying out this Agreement.

k. “This Agreement” means this Master Subscriber Agreement for Minnesota Court Data Services including all Exhibits, Request Forms, Policies & Notices, and other documents referenced, attached to, or submitted or issued hereunder.

l. "trade secret information of SCAO and its licensors" is defined in sections 7a., 7.b., and 7.d. of this Agreement.

3. REQUESTS FOR DATA ACCESS SERVICES. Following execution of this Agreement by both parties, Subscriber may submit to the Court one or more separate requests for Court Data Services on the Request Forms provided by the Court, each labeled as Exhibit A. One Request Form is required for each Court Data Service account requested. Each submitted Request Form must include sufficient detail to describe the Court Data Service being requested, including the desired Court Case Information, as directed on the Request Form. Request Forms approved by the Court are adopted and incorporated herein by this reference the same as if set forth verbatim herein. It is understood that Request Forms may be submitted on behalf of Subscriber by any Subscriber business unit personnel, and Subscriber hereby authorizes such personnel to perform this function. It is also understood that Request Forms may be approved on behalf of the Court by state court administration personnel or judicial district personnel (for Request Forms delegated to DCA for review) and the Court hereby authorizes such personnel to perform this function.

a. **Preliminary Review / Merit.** Upon receipt of a completed Request Form from Subscriber, the Court shall review the Court Data Service requested and the stated business reasons and thereafter shall determine whether the request has merit.

b. **Legal Authority.** After preliminary review and satisfaction that a request has merit, the Court will consider whether legal authority exists for the Court Data Service requested. For example, court rule, court order, or state or federal law may provide legal authority for the requested Court Data Service. If none exists, the Court may, in its discretion, present a draft court order to a judge or court with appropriate jurisdiction. It shall be the decision of that judge or court as to whether legal authorization is granted.

c. **Approval.** After preliminary review and satisfaction that a request has merit, and after a determination that legal authority exists to provide the Court Data Service requested, the Court shall approve the Request Form and thereby make it an Exhibit to this Agreement. Activation of the requested Court Data Service shall occur promptly following approval.

d. **Rejection.** Requests may be rejected for any reason, at the discretion of the Court.

e. Requests for Termination of One or More Court Data Services. The Subscriber may request the termination of Court Data Services previously requested by submitting a Change Request Form. See Change Request Form instructions for details on how to terminate a Court Data Service. Upon receipt of a request for termination of a Court Data Service, the Court will deactivate the service requested. The termination of one or more Court Data Services does not terminate this Agreement. Provisions for termination of this Agreement are set forth in section 1. Upon termination of Court Data Services, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

4. SCOPE OF ACCESS TO COURT RECORDS LIMITED. Subscriber's access to the Court Records shall be limited to Court Case Information identified in approved Request Forms and other Court Records necessary for Subscriber to use approved Court Data Services. Court Data Services shall only be used according to the instructions provided in corresponding Policies & Notices or other materials and only as necessary to assist Subscriber in the efficient performance of Subscriber's duties required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body. Subscriber's access to the Court Records for personal or non-official use is prohibited. Subscriber will not use or attempt to use Court Data Services in any manner not set forth in this Agreement, Policies & Notices, or other Court Data Services documentation, and upon any such unauthorized use or attempted use the Court may immediately terminate this Agreement without prior notice to Subscriber.

5. GUARANTEES OF CONFIDENTIALITY. Subscriber agrees:

a. To not disclose Court Confidential Information to any third party except where necessary to carry out the Subscriber's duties as required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body.

b. To take all appropriate action, whether by instruction, agreement, or otherwise, to insure the protection, confidentiality and security of Court Confidential Information and to satisfy Subscriber's obligations under this Agreement.

c. To limit the use of and access to Court Confidential Information to Subscriber's bona fide personnel whose use or access is necessary to effect the purposes of this Agreement, and to advise each individual who is permitted use of and/or access to any Court Confidential Information of the restrictions upon disclosure and use contained in this Agreement, requiring each individual who is permitted use of and/or access to Court Confidential Information to acknowledge in writing that the individual has read and understands such restrictions. For purposes of this Agreement, Subscriber's bona fide personnel shall mean individuals who are employees of Subscriber or provide services to Subscriber either on a voluntary basis or as independent contractors with Subscriber.

d. That, without limiting section 1 of this Agreement, the obligations of Subscriber and its bona fide personnel with respect to the confidentiality and security of Court Confidential Information shall survive the termination of this Agreement and the termination of their relationship with Subscriber.

e. That, notwithstanding any federal or state law applicable to the nondisclosure obligations of Subscriber and Subscriber's bona fide personnel under this Agreement, such obligations of Subscriber and Subscriber's bona fide personnel are founded independently on the provisions of this Agreement.

6. APPLICABILITY TO COURT CASE INFORMATION PROVIDED UNDER LEGAL MANDATE, PREVIOUSLY DISCLOSED COURT RECORDS, AND PREVIOUSLY SUBMITTED REQUEST FORMS. Subscriber acknowledges and agrees:

a. **Court Case Information Provided Under Legal Mandate.** When the Court is required to provide Subscriber with Court Case Information under a legal mandate and the provision of such data by the Court is not optional or otherwise left to the discretion of the Court, for example in the case of a state statutory reporting requirement, the provisions of this Agreement that govern or restrict Subscriber's access to and use of Court Case Information do not apply to the specific data elements identified in the legal mandate, but remain in effect with respect to all other Court Case Information provided by the Court to Subscriber. All other provisions of this Agreement remain in full effect, including, without limitation, provisions that govern or restrict Subscriber's access to and use of Court Confidential Security and Activation Information.

b. **Previously Disclosed Court Records.** Without limiting section 6.a., all Court Records disclosed to Subscriber prior to the effective date of this Agreement shall be subject to the provisions of this Agreement.

c. **Previously Submitted Request Forms.** All Request Forms submitted by Subscriber and approved by the Court prior to the effective date of this Agreement hereby become subject to and Exhibits of this Agreement with the same effect as if they were submitted and approved following the execution of this Agreement, as described in Section 3.

7. LICENSE AND PROTECTION OF PROPRIETARY RIGHTS. During the term of this Agreement, subject to the terms and conditions hereof, the Court, with the permission of the SCAO, hereby grants to Subscriber a nonexclusive, nontransferable, limited license to use Court Data Services Programs and Court Data Services Databases to access or receive the Court Records. SCAO and the Court reserve the right to make modifications to the Court Data Services, Court Data Services Programs, and Court Data Services Databases, and related materials without notice to Subscriber. These modifications shall be treated in all respects as their previous counterparts.

a. **Court Data Services Programs.** SCAO is the copyright owner and licensor of the Court Data Services Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the Court Data Services Programs, and all information contained in documentation pertaining to the Court Data Services Programs, including but not limited to manuals, user documentation, and passwords, are trade secret information of SCAO and its licensors.

b. **Court Data Services Databases.** SCAO is the copyright owner and licensor of the Court Data Services Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the Court Data Services Databases and their structure, sequence and organization, including without

limitation data schemas such as the Court XML Schema, are trade secret information of SCAO and its licensors.

c. Marks. Subscriber shall neither have nor claim any right, title, or interest in or use of any trademark used in connection with Court Data Services, including but not limited to the marks “MNCIS” and “Odyssey.”

d. Restrictions on Duplication, Disclosure, and Use. Trade secret information of SCAO and its licensors will be treated by Subscriber in the same manner as Court Confidential Information. In addition, Subscriber will not copy any part of the Court Data Services Programs or Court Data Services Databases, or reverse engineer or otherwise attempt to discern the source code of the Court Data Services Programs or Court Data Services Databases, or use any trademark of SCAO or its licensors, in any way or for any purpose not specifically and expressly authorized by this Agreement. As used herein, "trade secret information of SCAO and its licensors" means any information possessed by SCAO which derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of SCAO and its licensors" does not, however, include information which was known to Subscriber prior to Subscriber's receipt thereof, either directly or indirectly, from SCAO or its licensors, information which is independently developed by Subscriber without reference to or use of information received from SCAO or its licensors, or information which would not qualify as a trade secret under Minnesota law. It will not be a violation of this section 7, sub-section d, for Subscriber to make up to one copy of training materials and configuration documentation for each individual authorized to access, use, or configure Court Data Services, solely for its own use in connection with this Agreement. Subscriber will take all steps reasonably necessary to protect the copyright, trade secret, and trademark rights of SCAO and its licensors and Subscriber will advise its bona fide personnel who are permitted access to any of the Court Data Services Programs and Court Data Services Databases, and trade secret information of SCAO and its licensors, of the restrictions upon duplication, disclosure and use contained in this Agreement.

e. Proprietary Notices. Subscriber will not remove any copyright or proprietary notices included in and/or on the Court Data Services Programs or Court Data Services Databases, related documentation, or trade secret information of SCAO and its licensors, or any part thereof, made available by SCAO or the Court, and Subscriber will include in and/or on any copy of the Court Data Services Programs or Court Data Services Databases, or trade secret information of SCAO and its licensors and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to Subscriber by SCAO or the Court, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

f. Title; Return. The Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration material, if any, and logon account information and passwords, made available by the Court and SCAO to Subscriber hereunder, and all copies, including partial copies, thereof are and remain the property of the respective licensor. Within ten days of the effective date of termination of this Agreement or within ten days of a request for termination of a data access service as described in section 3.e., Subscriber shall either: (i) uninstall and return any and all copies of the applicable Court Data Services Programs and Court Data Services Databases, and related documentation, including but

not limited to training and configuration materials, if any, and logon account information; or (2) destroy the same and certify in writing to the Court that the same have been destroyed.

8. INJUNCTIVE RELIEF; LIABILITY. Subscriber acknowledges that the Court, SCAO, SCAO'S licensors, and DCA will be irreparably harmed if Subscriber's obligations under this Agreement are not specifically enforced and that the Court, SCAO, SCAO'S licensors, and DCA would not have an adequate remedy at law in the event of an actual or threatened violation by Subscriber of its obligations. Therefore, Subscriber agrees that the Court, SCAO, SCAO'S licensors, and DCA shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Subscriber or its bona fide personnel without the necessity of the Court, SCAO, SCAO'S licensors, or DCA showing actual damages or that monetary damages would not afford an adequate remedy. Unless Subscriber is an office, officer, agency, department, division, or bureau of the state of Minnesota, Subscriber shall be liable to the Court, SCAO, SCAO'S licensors, and DCA for reasonable attorneys fees incurred by the Court, SCAO, SCAO'S licensors, and DCA in obtaining any relief pursuant to this Agreement.

9. INDEMNIFICATION. Subscriber and the Court agree that, except as otherwise expressly provided herein, each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Liability shall be governed by applicable law. Without limiting the foregoing, liability of the Court and any Subscriber that is an office, officer, agency, department, division, or bureau of the state of Minnesota shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, section 3.376, and other applicable law. Without limiting the foregoing, if Subscriber is a political subdivision of the state of Minnesota, liability of the Subscriber shall be governed by the provisions of Minn. Stat. Ch. 466 (Tort Liability, Political Subdivisions) or other applicable law.

10. AVAILABILITY. Specific terms of availability shall be established by the Court and set forth in the Policies & Notices. The Court reserves the right to terminate this Agreement immediately and/or temporarily suspend Subscriber's approved Court Data Services in the event the capacity of any host computer system or legislative appropriation of funds is determined solely by the Court to be insufficient to meet the computer needs of the courts served by the host computer system. Monthly fees, if any, shall be prorated only for periods of suspension or upon termination of this Agreement.

11. ACKNOWLEDGMENT BY INDIVIDUALS WITH ACCESS TO COURT RECORDS UNDER THIS AGREEMENT. To effect the purposes of this Agreement, Subscriber shall advise each individual who is permitted to use and/or access Court Records under this Agreement of the requirements and restrictions in this Agreement and shall require each individual to acknowledge in writing that the individual has read and understands such requirements and restrictions. Subscriber shall keep such acknowledgements on file for one year following termination of this Agreement and shall provide the Court with access to, and copies of, such acknowledgements upon request.

12. ADDITIONAL USER OBLIGATIONS. The obligations of the Subscriber set forth in this section are in addition to the other obligations of the Subscriber set forth elsewhere in this Agreement.

a. Judicial Policy Statement. Subscriber agrees to comply with all policies identified in applicable Policies & Notices. Upon failure of the Subscriber to comply with such policies, the Court shall have the option of immediately suspending the Subscriber's Court Data Services on a temporary basis and/or immediately terminating this Agreement.

b. Access and Use; Log. Subscriber shall be responsible for all access to and use of Court Data Services and Court Records by Subscriber's bona fide personnel or by means of Subscriber's equipment or passwords, whether or not Subscriber has knowledge of or authorizes such access and use. Subscriber shall also maintain a log identifying all persons to whom Subscriber has disclosed its Court Confidential Security and Activation Information, such as user ID(s) and password(s), including the date of such disclosure. Subscriber shall maintain such logs for a period of one year following termination of this Agreement, and shall provide the Court with access to, and copies of, such logs upon request. The Court may conduct audits of Subscriber's logs and use of Court Data Services and Court Records from time to time. Upon Subscriber's failure to maintain such logs, to maintain accurate logs, or to promptly provide access by the Court to such logs, the Court may terminate this Agreement without prior notice to Subscriber.

c. Personnel. Subscriber agrees to investigate, at the request of the Court, allegations of misconduct pertaining to Subscriber's bona fide personnel having access to or use of Court Data Services, Court Confidential Information, or trade secret information of the SCAO and its licensors where such persons violate the provisions of this Agreement, Policies & Notices, Judicial Branch policies, or other security requirements or laws regulating access to the Court Records.

13. FEES; INVOICES. Unless the Subscriber is an office, officer, department, division, agency, or bureau of the state of Minnesota, Subscriber shall pay the fees, if any, set forth in applicable Policies & Notices, together with applicable sales, use or other taxes. Applicable monthly fees commence ten (10) days after notice of approval of the request pursuant to section 3 of this Agreement or upon the initial Subscriber transaction as defined in the Policies & Notices, whichever occurs earlier. When fees apply, the State shall invoice Subscriber on a monthly basis for charges incurred in the preceding month and applicable taxes, if any, and payment of all amounts shall be due upon receipt of invoice. If all amounts are not paid within 30 days of the date of the invoice, the Court may immediately cancel this Agreement without notice to Subscriber and pursue all available legal remedies. Subscriber certifies that funds have been appropriated for the payment of charges under this Agreement for the current fiscal year, if applicable.

14. MODIFICATION OF FEES. SCAO may modify the fees by amending the Policies & Notices as provided herein, and the modified fees shall be effective on the date specified in the Policies & Notices, which shall not be less than thirty days from the publication of the Policies & Notices. Subscriber shall have the option of accepting such changes or terminating this Agreement as provided in section 1 hereof.

15. WARRANTY DISCLAIMERS.

a. WARRANTY EXCLUSIONS. EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, COURT, SCAO, SCAO'S LICENSORS, AND DCA MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A

PARTICULAR PURPOSE OR MERCHANTABILITY, NOR ARE ANY WARRANTIES TO BE IMPLIED, WITH RESPECT TO THE INFORMATION, SERVICES OR COMPUTER PROGRAMS MADE AVAILABLE UNDER THIS AGREEMENT.

b. ACCURACY AND COMPLETENESS OF INFORMATION. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING PARAGRAPH, COURT, SCAO, SCAO'S LICENSORS, AND DCA MAKE NO WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THE COURT RECORDS.

16. RELATIONSHIP OF THE PARTIES. Subscriber is an independent contractor and shall not be deemed for any purpose to be an employee, partner, agent or franchisee of the Court, SCAO, SCAO'S licensors, or DCA. Neither Subscriber nor the Court, SCAO, SCAO'S licensors, or DCA shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.

17. NOTICE. Except as provided in section 2 regarding notices of or modifications to Court Data Services, Policies & Notices, and Request Forms, section 3 regarding Request Forms, and in sections 13 and 14 regarding notices of or modification of fees, any notice to Court or Subscriber hereunder shall be deemed to have been received when personally delivered in writing or seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at the address set forth on page one of this Agreement or at such other address of which notice has been given in accordance herewith.

18. NON-WAIVER. The failure by either party at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, remedy or option or in any way affect the validity of this Agreement. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

19. FORCE MAJEURE. Neither party shall be responsible for failure or delay in the performance of their respective obligations hereunder caused by acts beyond their reasonable control.

20. SEVERABILITY. Every provision of this Agreement shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Agreement so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Agreement, and all other provisions shall remain in full force and effect.

21. ASSIGNMENT AND BINDING EFFECT. Except as otherwise expressly permitted herein, neither Party may assign, delegate and/or otherwise transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, including any corporation or other legal entity into, by or with which Subscriber may be merged, acquired or consolidated or which may purchase the entire assets of Subscriber.

22. GOVERNING LAW. This Agreement shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States and of the State of Minnesota.

23. VENUE AND JURISDICTION. Any action arising out of or relating to this Agreement, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. Subscriber hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.

24. INTEGRATION. This Agreement sets forth the entire Agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations, statements, proposals, negotiations, discussions, understandings, or agreements regarding the same subject matter. Except as otherwise expressly provided in section 2 regarding Court Data Services, Policies & Notices, and Request Forms, section 3 regarding Request Forms, and in sections 13 and 14 regarding fees, any amendments or modifications to this Agreement shall be in writing signed by both Parties.

25. MINNESOTA DATA PRACTICES ACT APPLICABILITY. If Subscriber is a Minnesota Government entity that is subject to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, Subscriber acknowledges and agrees that: (1) the Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court; (2) Minn. Stat. section 13.03, subdivision 4(e) requires that Subscriber comply with the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court for access to Court Records provided under this Agreement; (3) the use of and access to Court Records may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law; and (4) these applicable restrictions must be followed in the appropriate circumstances.

IN WITNESS WHEREOF, the Parties have, by their duly authorized officers, executed this Agreement in duplicate, intending to be bound thereby.

1a. **SUBSCRIBER**
Subscriber must attach written verification of authority to sign on behalf of and bind the entity, such as an opinion of counsel or resolution.

By _____
(SIGNATURE)

Date _____

Name (typed) _____

Title _____

Office _____

2. **The Court**

By _____
(SIGNATURE)

Date _____

Name (typed) Dean Buker

Title ITD Deputy Director

Office Information Technology Division of
State Court Administration

The following signature required when
Subscriber is a Minnesota State Agency
as defined in M.S. §16C.02 subd. 2:

1b. **COMMISSIONER OF
ADMINISTRATION, STATE OF
MINNESOTA**
delegated to materials Management
Division

By _____
(SIGNATURE)

Date _____



May 4, 2015

The Honorable «First_Name» «Last_Name»
 Attorney General of the State of «State»
 «Address»
 «City_State_Zip»

Re: *North Carolina State Board of Dental Examiners v. FTC*

Open Letter of Inquiry and Request for Documents

Dear «Title» Attorney General:

We write to alert you to the critical significance of the U.S. Supreme Court’s recent decision in *North Carolina State Board of Dental Examiners v. FTC*, 574 U.S. ___, 135 S. Ct. 1101 (February 25, 2015), and solicit your response as well as relevant public documents regarding its implementation in «State». As discussed below, this case holds that much of the activity conducted by «State»’s licensing boards is not protected by the “state-action antitrust immunity” doctrine. Critically, the Court’s holding hinges on the fact that the majority of the members of the state regulatory board at issue were “engaged in the active practice of the profession it regulates.” *Id.* at 1107. In other words, “active market participants cannot be allowed to regulate their own markets free from antitrust accountability.” *Id.* at 1111. Accordingly, your board and commission members are theoretically vulnerable to federal felony prosecution and civil treble damages – and your indemnifying state budget may be similarly exposed. We explain this apparently startling circumstance as follows:

As you know, «State» has numerous agencies that regulate trades and professions. These agencies often take the form of multimember “boards” or “commissions.” They commonly regulate a large portion of the state’s economy – from accountants, architects, attorneys, pharmacists, dentists, and doctors, to most of the other licensed trades – contractors, brokers, barbers, nurses, and many others.

Many of the decisions these entities make on a regular basis necessarily “restrain trade.” For example, they decide who is allowed to practice a trade or profession and who is excluded, with the force of law. They revoke licenses, and specify how the licensees are to practice. These acts, if committed by a cartel – or any private grouping of competitors – would be *per se* antitrust violations under federal law (*e.g.*, Sherman

Hon. «First_Name» «Last_Name»

May 4, 2015

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Act, 15 U.S.C. § 1 *et seq.*) For example, licensing boards control supply by limiting entry into the profession or market. These barriers to entry are effectively “group boycotts,” which, as *per se* offenses, constitute antitrust violations without recourse to their “reasonableness” or other related defenses. The federal remedy for any violation of the Sherman Act includes potential felony prosecution, as well as private civil treble damages relief.

Virtually all of the regulation these agencies undertake sufficiently “affects interstate commerce” to invoke the supremacy jurisdiction of federal antitrust law. Because federal courts have recognized “state-action immunity” from antitrust laws, and have permitted such restraints notwithstanding their facial violation of law, that “state action” status is critical to the lawful function of every state regulatory board.

Three seminal decisions by the U.S. Supreme Court frame this special immunity, starting with *Parker v. Brown*, 317 U.S. 341 (1943). In *Parker*, the Supreme Court created the longstanding “two-pronged test” to qualify for “state-action” immunity: The challenged action must be (1) affirmatively authorized by the state, and 2) subject to active supervision by the state. *Id.* at 351-52.

The second seminal case is *California Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980), a decision that directly examined the “active state supervision” prong. That case stands partly for the proposition that “state supervision” must be specific and *bona fide*. *Id.* at 105-06. In other words, state “rubber stamping” of a regulatory board’s action will not suffice. *Id.*

We respectfully contend that, notwithstanding these and related precedents, your state (like many others) has chosen to ignore them, and has created “state” boards that are directly controlled by members of the very trade or profession they purport to regulate. Indeed, the vast majority of occupational licensing boards and commissions nationwide are now comprised of majorities (or even supermajorities) of licensed professionals in the very economic tribal grouping with an economic interest in restraints of trade benefiting them. In fact, «State» actually *requires* that board and commission positions be filled by those with such a conflict.¹

It is in this context that the U.S. Supreme Court has just decided the third in this series of basic cases: *North Carolina State Board of Dental Examiners*, 135 S. Ct. 1101. We attach for your reference the full three-page syllabus of this 6-3 decision, bolded to emphasize the most pertinent passages. This decision is neither narrow nor subject to

¹ Political reformers are concerned about the surrender of the legislative and other elective elements of our democracy to special interest domination from campaign contribution to job interchange and lobbying domination. Indeed, there has been a marked evolution of political organization around peers and colleagues in virtually every trade, occupation, and economic grouping, such that the Congress and state legislatures increasingly function as passive mediators among the “stakeholders” so represented, and leaving diffuse and future interests unrepresented. These latter concerns, including our legacy to those who follow us, form a central value of individuals within our democracy – a value that ideally is not subjugated.

exception or avoidance. It directly and repeatedly announces a bright-line minimum test for “state action” sovereign immunity: Those controlling the decisions that might restrain trade may not be “active market participants” in the trade regulated. For every agency so afflicted, the legal status of those making such decisions is clear – they are, in the words of the Court, “nonsovereign actors” who lack any state sovereign immunity whatever. Their decisions are no different than a decision undertaken by a cartel or private combination of competitors. You are invited to review the decision *en toto* and draw your own conclusions, or to refer it and this letter to the leading antitrust prosecutors and experts in your jurisdiction.

Significantly, the decision renders unlawful what has become the common regulatory practice across all 50 states. The holding reviews the prior *Parker* and *Midcal* decisions as described above. It states: “Limits on state action immunity are most essential when a State seeks to delegate its regulatory power to active market participants.” *North Carolina State Board of Dental Examiners*, 135 S.Ct. at 1111.

Either the composition of the board receiving such delegation must be changed (*e.g.*, with the addition of a supermajority of non-conflicted “public members”) or all actions of a board dominated by active market participants must be subject to a state supervision mechanism that “provide[s] ‘realistic assurance’ that a nonsovereign actor’s anticompetitive conduct ‘promotes state policy, rather than merely the party’s individual interests.’” *North Carolina State Board of Dental Examiners*, 135 S.Ct. at 1116, *quoting Patrick v. Burget*, 486 U.S. 94, 100-01 (1988). This alternative requires actual “active supervision” by the state. The Court does not mince words in describing the inadequacy of theoretical or general oversight to accomplish such a cure, noting that such supervision cannot be undertaken by those who are “active market participants” in the relevant trade themselves, and going beyond that threshold as follows: “[T]he supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it...; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy...; , and the ‘mere potential for state supervision is not an adequate substitute for a decision by the State....” 135 S.Ct. at 1116 (citations omitted).

In these regards, neither the presence of an Office of Attorney General official, nor a general rulemaking review entity, nor general legislative or other oversight will confer such immunity. Only where the decision is made by those who are not “active market participants” in the relevant trade or activity, or where decisions and acts are specifically reviewed for anticompetitive effect by a state agency lacking that bias and with the authority to veto and modify, will sovereign status be conferred. Lacking that structure – which is currently rare to non-existent – the presence of even a majority of a quorum of “active market participants” on an applicable governing board precludes or jeopardizes its immunity.²

² For example, more than three members of a 13-member board currently participating in the industry would allow those persons to win a vote of a quorum, thus determining that decision in violation of this holding.

The extent of current liability under federal antitrust law for many occupational licensing boards and their members is *in extremis*. Signatory Center for Public Interest Law (CPIL) is familiar with the applicable caselaw and the impact of the *North Carolina* decision. Professor Fellmeth personally served as a state and federal antitrust prosecutor for nine years and is the co-author of the treatise *California White Collar Crime* (with Thomas A. Papageorge, Tower Publishing, 4th edition 2013), as well as other relevant publications. CPIL has studied the activities of California's regulatory agencies for 35 years, teaching the subject, and publishing the *California Regulatory Law Reporter*. Our analysis is not borne of naiveté, nor is it the product of ideological predilections – apart from sympathy with the precepts of democratic government. See www.cpil.org.

The Citizen Advocacy Center (CAC) is a nonprofit organization whose mission is to increase the accountability, transparency, and effectiveness of state health care professional regulatory boards and national voluntary certification organizations by offering training, research, and networking opportunities for public members serving on these entities. The CAC supports efforts to review unjustifiable anticompetitive restrictions they impose that harm consumers. See www.cacenter.org.

Consumers Union is the advocacy division of the nonprofit publisher, Consumer Reports, which for nearly 80 years has empowered consumers with the knowledge they need to make better and more informed choices. The organization's Safe Patient Project has advocated for a safer health care system for the past 12 years on several fronts, covering physician accountability, health care-acquired infections, medical errors, and medical device safety. See www.SafePatientProject.org.

Each of these organizations has a longstanding interest in securing a legitimate democracy controlled by the People; one without corruptive delegation to cartel or other pecuniary special interests. We are concerned that the law upholding these core values is enforced and that the Attorneys General of the respective states perform their assigned preeminent task to assure that compliance.

We understand that a board or commission structure has advantages over a bureau or department. For example, the multimember board structure generally activates “open meeting” procedural statutes that make their operations more transparent. In contrast, a bureau or department headed by an individual may be subject to *ex parte* lobbying by the plethora of economically-interested trade associations who track and advocate before regulatory agencies. That pattern of hidden influence is endemic, and is also problematical where there are not proper limitations on privately-advanced contentions and secretly negotiated deals. And there are other features of the current regime in «State» that we recognize warrant at least a measure of favorable consideration.³

³ We recognize that most members of regulatory boards and commissions believe that they are serving the public interest, are unpaid, and intend to serve democratic values. But they are necessarily part of the tribal grouping that our occupational associations have fostered. By way of illustration: State bars controlled by attorneys rarely discipline for excessive billing or intellectual dishonesty. Few require any demonstration whatever of competence in the actual practice area of law relied upon by clients. Few

You are the chief law enforcement official of «State». You also advise state agencies. As such, your predominant obligation is not to arrange or excuse violations of law, but to prevent them and, where that fails, to enforce the law. That function may place you at odds with the political and institutional prerogatives of these agencies, but we respectfully contend that your duty is not to them as clients receiving blind fealty, but to compliance with applicable Supreme Court decisions warranting your respect.

With the above in mind, we ask the following four questions divided into (a) and (b) respectively. Under (a) we respectfully ask for your response to our questions. Under (b) we separately request documents that contain related information, as described below, pursuant to your Public Records Act.

1. (a) Which agencies governed by multi-member boards regulating professions or trades are composed in majority of “active market participants” in the regulated trade or profession? Which acts and decisions of these boards are subject to “independent state supervision” for restraint of trade impact prior to their legal efficacy? Please explain which entity accomplishes this review, its authority, and its directive to consider anticompetitive implications.

(b) Please provide documents that identify the make-up of your regulatory agencies’ multi-member governing bodies, including the statutes/rules governing how many and which ones are required to be participants in the trade or profession regulated.

2. (a) How many of the members of these boards and commissions identified in your answer to Question #1 above have you notified of their potential criminal and civil liability if they make decisions that would constitute a violation of federal antitrust law? Does that notice include the revelation that their decisions are not entitled to “state action” or other sovereign protection?

(b) Please produce copies of your notification to such persons. If the notice is the same or similar to all such persons, a single copy will suffice, with a list of recipients.

require malpractice insurance, or in any way ameliorate the harm from attorney incompetence. The point is, each of the many agencies within your state is empowered to carve out momentous exceptions from federal antitrust law, and those decisions in particular require a level of independence from the implicit focus of current practitioners.

We also recognize that there is an important role for expertise in the regulation of most trades and professions. As Justice Scalia has pointed out, we have an interest in listening to neurosurgeons in evaluating the competence of new applicants to such an important and complex function. But such contributions may be received without conferring final authority over state policy to current and conflicted practitioners of that trade.

Hon. «First_Name» «Last_Name»

May 4, 2015

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3. (a) Please explain the indemnification policy of the state in terms of criminal or civil liability if a federal criminal or civil case arises and judgment is entered against those individuals? Is publicly financed counsel provided in such a case? Are damages to be subsumed by the state treasury? Please provide estimates or calculations of possible public exposure to federal court treble damage awards.

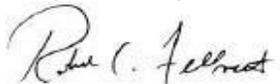
(b) Please produce documents that analyze or disclose antitrust liability exposure to the state treasury from potential agency antitrust violations, if any such documents exist.

4. (a) With whom have you communicated about the implications of this holding? Have you communicated with your Supreme Court Justices or Legislators or their respective offices or agents? Have you communicated with the Federal Trade Commission or the United States Attorney General or a United States Attorney's Office or its agents?

(b) Please produce such notifications. If the notice is the same or similar to all such persons, a single copy will suffice, with a list of recipients.

Thank you for your consideration of this request. Please mail your responses to Center for Public Interest Law, University of San Diego School of Law, 5998 Alcalá Park, San Diego, CA 92110 or email to cpil@sandiego.edu.

Very sincerely,



Robert C. Fellmeth
Executive Director, Center for Public Interest Law
Price Professor of Public Interest Law
University of San Diego School of Law



David Swankin
President and CEO
Citizen Advocacy Center



Lisa McGiffert
Director, Safe Patient Project
Consumers Union

Attached: Three-page U.S. Supreme Court syllabus of *North Carolina State Board of Dental Examiners v. FTC* (Feb. 25, 2015)

cc: State Attorneys General
National Association of Attorneys General



**FEDERATION OF
ASSOCIATIONS
OF REGULATORY BOARDS**

1466 Techny Road
Northbrook, IL 60062
847-559-3272
847-714-9796 FAX
FARB@FARB.org
www.FARB.org

American Association of
State Counseling Boards

American Association of
Veterinary State Boards

Association of Regulatory
Boards of Optometry

Association of Social Work Boards

Association of State and Provincial
Psychology Boards

Federation of Chiropractic
Licensing Boards

Federation of State Massage
Therapy Boards

International Conference of
Funeral Service Examining Boards

The National Association of Long
Term Care Administrator Boards

National Association of
Boards of Pharmacy

National Association of State
Boards of Accountancy

National Association of State
Contractors Licensing Agencies

National Association of State
EMS Officials

National Board for Certification
In Occupational Therapy

National Council of Architectural
Registration Boards

May 22, 2015

The Honorable «fname» «lname»

Attorney General

«add1»

«add2»

«city» «state1» «zip»

Re: *North Carolina State Board of Dental Examiners v. FTC*

Dear «sal» Attorney General:

The Federation of Associations of Regulatory Boards (FARB) recognizes the importance of the recent United States Supreme Court's decision in *North Carolina State Board of Dental Examiners v. FTC*, 574 U.S. ___, 135 S. Ct. 1101 (February 25, 2015). While the opinion has potentially significant consequences, the regulatory and political communities are urged to exercise restraint and refrain from demanding major changes to a regulatory system that for centuries has been quite successful in protecting the general public. Indeed, a May 4, 2015, letter co-authored by the Center for Public Interest Law, the Citizen Advocacy Center, and the Consumers Union and sent to the Attorneys General offices not only promotes just such an overreaction through fear mongering and a condescending tone, but also contains misinformation about the scope of the Supreme Court opinion.

FARB is an Internal Revenue Code 501(c)(3), not for profit, national organization whose Governing Members are listed on this letterhead. Each such FARB Governing Member is a not for profit association whose membership is comprised of the regulatory boards of all United States jurisdictions of the respective profession and whose mission is to provide programs and services to such member boards to assist them in regulating the profession in the interest of public protection. The FARB mission is to *promote excellence in regulation for public protection by providing expertise and innovation from a multi-professional perspective*. As part of this mission, FARB is assisting its membership to identify the appropriate response to the Supreme Court decision.

Government regulation of the professions is essential to protecting the consuming public. Statutorily created and empowered regulatory boards enforce the respective practice act and other applicable laws in the interest of public protection. Further, board members are presumed to act in the interest of the public when undertaking activities within the scope of the regulatory structure. A presumption of objectivity is critical to the enforcement of the public protection mandates free from threats of liability. Participation by licensed professionals on regulatory boards provides necessary expertise and experience regarding regulation of the profession and is essential to the development, interpretation, and enforcement of the regulatory structure.

«Name»

May 22, 2015

Page 2 of 3

Governmental boards and their volunteer members must be protected in carrying out these vital public protection mandates. Although the Supreme Court categorized the North Carolina State Board of Dental Examiners as “nonsovereign” and, thus, subject to meeting both the clearly articulated state policy and active state oversight prongs in order to enjoy antitrust immunity under the state action doctrine, the patently false statements contained in the May 4 letter unnecessarily paints the picture that “all” activities undertaken by regulatory boards “must” be subject to a state supervision mechanism.

The May 4 letter also references additional examples of catastrophic consequences based upon an inaccurate interpretation of the Supreme Court opinion. It jumps to certain conclusions that Attorney General oversight and rulemaking will not confer immunity. Such a conclusion is inaccurate and each Attorney General’s office will undoubtedly interpret the breadth of the opinion with respect to the particular regulatory framework of that state. Many states will likely determine that no action is necessary. The letter also concludes that the “decision renders unlawful what has become the common practice across all 50 states.” A conclusion that all state board action is now somehow “unlawful” based upon the judicial opinion is inaccurate. Under its most aggressive interpretation, the Supreme Court opinion imposes a two prong test to antitrust immunity under a state action doctrine defense. More likely, an interpretation must be made as to whether a board’s activities arguably implicate the application of the antitrust laws and, if such a threshold is met, whether the state action doctrine provides an affirmative defense. As referenced, and based upon the current regulatory structures, many jurisdictions will conclude that the regulatory structure satisfies both prongs of the test.

In a one size fits all approach, the May 4 letter also contends that “your state (like many others) has chosen to ignore [legal precedents] and has created ‘state’ boards that are directly controlled by members of the very trade or profession they purport to regulate.” Again, the legislatively created and empowered regulatory boards have been populated with persons knowledgeable with the profession and subject to the objectivity and ethical bounds of volunteering for public service.

Of significant concern are the contentions of the authors that “hidden influence is endemic and is also problematic where there are not proper limitations on privately-advanced contentions and secretly negotiated deals.” Such inflammatory and unsubstantiated allegations serve no purpose other than to question the integrity of the entire regulatory structures and do not promote a meaningful basis for change, if determined to be necessary.

The Supreme Court decision does blur the line between sovereign government agencies and private entities. The two-part test cited by the Supreme Court holds that in order to claim immunity, non-sovereign governmental boards must (1) have a clearly articulated state policy **and** (2) be actively supervised by the state. While it is arguable that governmental boards should be deemed to be “sovereign actors” and, perhaps, required to meet only the first prong of the test, incorporating suggestions for sound, uniform statutory language and ensuring proper state oversight can ensure state regulatory boards are meeting both requirements.

«lname»

May 22, 2015

Page 3 of 3

FARB has begun the process of modifying its Generic Model Practice Act to address the two-prong test, understanding the need to operationalize any such legislative suggestions.

Governmental licensing continues to be an important vehicle in promoting the *health, safety, and welfare* of the consuming public. States should work to strengthen their state regulatory boards and promote uniformity across professions. Volunteer board members should be commended for the work they do in the interest of public protection.

FARB requests that your office seriously consider the impact of any potential alterations to your regulatory structure and exercise due diligence before undertaking any changes. While certain measures in certain jurisdictions may be determined to be advisable under the circumstances, a political knee jerk reaction only has the potential for ignoring the needed benefits of involved and informed board members. FARB is prepared to provide additional and more encompassing information should you so desire. Thank you for your consideration.

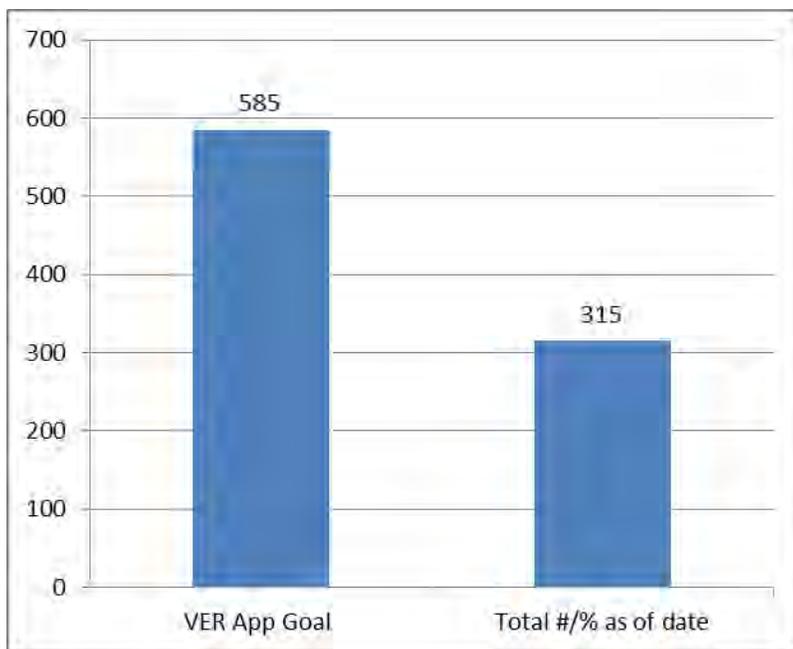
Sincerely,

A handwritten signature in black ink, appearing to read "D. Atkinson", with a stylized flourish at the end.

Dale Atkinson
Executive Director

Volunteer Education Reimbursement FY15

As of June 11, 2015



**Days to
Deadline:**

12

Processed as of	VER App Goal	Total #/% as of date	Percent of Goal met	Days to 6/26/15 Deadline
6/11/2015	585	315	54%	12

Fiscal Year	Spent	Total fund	Available to Spend	Percent spent	Redistributed/(per Regional System).
2015	288,550.00	361,000.00	72,450.00	80%	(9,056.25)