

Hooper, Lundy & Bookman Secures Dismissal With Prejudice for Federation of State Medical Boards in Physician Speech Lawsuit

News

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Hooper, Lundy & Bookman (HLB) has secured the dismissal with prejudice of all claims against its clients, the Federation of State Medical Boards (FSMB) and two of its former board members, in a federal lawsuit brought by a group of physicians that alleged a conspiracy to discipline physicians based upon the organization's policy recommendations. On Oct. 28, 2026, Judge Mark T. Pittman of the U.S. District Court for the Northern District of Texas granted FSMB's motion to dismiss in *Sutton v. Federation of State Medical Boards, Inc.*, No. 4:25-cv-01230-P.

The plaintiffs, physicians disciplined by medical boards in seven states, alleged that FSMB's COVID-19-era guidance was part of a coordinated effort among state medical boards and other medical-community actors to suppress dissenting views on the nation's response to the pandemic. They pointed to a July 2021 statement warning that physicians who spread COVID-19 misinformation or disinformation could face disciplinary action, as well as an April 2022 policy recommendation advising member boards on best practices to address physician speech that carried with it a risk to patient safety.

The court rejected the plaintiffs' broad allegations that developing guidance and best practices at the intersection of professional speech and protected speech amounted to a conspiracy among the defendants.

The court also rejected the theory that membership in FSMB, or any action by member boards aligned with the FSMB's recommendations, could establish a conspiracy. "The fact that FSMB promulgated standards that its member medical boards chose to implement is by no means indicative of an 'agreement' to violate Plaintiffs' constitutional rights," Judge Pittman wrote. The court emphasized that the discipline at issue was imposed by the individual state boards for violations of their respective state laws that governed the professional and ethical conduct of physicians.

The decision underscores that efforts by professional associations to develop policy guidance and coordinate with regulators on best practices, absent specific evidence of an unlawful agreement, are insufficient to support a conspiracy claim

"This decision underscores that professional associations can collaborate with regulators on best practices policy guidance without such activities being recast as a conspiracy by those who disagree," said [Eric Fish](#), partner at Hooper,

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Lundy & Bookman. “That principle matters for every association that helps its members set professional standards that may become incorporated into state law.”

The court further dismissed the claims against the state medical board defendants, finding that it lacked personal jurisdiction over the non-Texas boards and that the claims against the Texas Medical Board and its president were barred by sovereign and qualified immunity.

[*Bloomberg Law covered the decision in “Lawsuit Over Medical Boards’ Covid-19 Policies Tossed by Court.”*](#)

HLB attorneys [Eric Fish](#) and [Heather Romero](#) represented the FSMB as lead counsel. Grant Schmidt and Hannah Luke of Willkie Farr & Gallagher served as local counsel in support of HLB’s defense of FSMB.

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