

STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.:08 CvS 2242

**LAURA FARUQUE,** )  
 )  
 *Plaintiff,* )  
 )  
 vs. )  
 )  
 **F. ALICE BISHOPRIC, ROBERT D.** )  
 **BOYD, STEVEN R. MERTA and** )  
 **CLAIRE HARRAGHY,** )  
 )  
 *Defendants.* )

**REPLY BRIEF IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS**

Pursuant to the North Carolina Rules of Civil Procedure, Defendants', F. Alice Bishopric ("Dr. Bishopric"), Robert D. Boyd ("Dr. Boyd"), and Steven R. Merta ("Dr. Merta")(hereinafter collectively referred to as "Defendants"), respectfully submit this Reply Brief in support of their Motion to Dismiss Plaintiff's claim of unfair and deceptive trade practices.

#### ARGUMENT

##### **Plaintiff's Unfair and Deceptive Trade Practices Claim is Barred by the Learned Profession Exemption.**

Plaintiff argues that her unfair and deceptive trade practice claim is not barred by the learned profession exemption. (Plaintiff's Brief ¶ 4). In support of this contention, Plaintiff relies solely on the Court's opinions in *Reid v. Ayers*, 138 N.C.App. 261, 531 S.E.2d 231 (2000) and *Cameron v. New Hanover Memorial Hospital*, 58 N.C.App. 414, 293 S.E.2d 90, *disc. Review denied*, 307 N.C. 127, 297 S.E.2d 399 (1982).

In *Reid*, the Court analyzed the learned profession exemption as it applied to attorneys rendering debt collection legal services for their clients. The Court held that the Plaintiff's unfair practice claim against the defendants was barred by the learned profession exemption since defendants were "rendering a professional service that is often carried out by law firms or attorneys". *Id.* at 267, 531 S.E.2d at 235. The facts and holding of this case draw no parallels to the current case before the Court. Rather, Plaintiff would have this

Court rely on the dictum of the Court in *Reid*. See, *RCDI Cont., Inc. V. Spaceplan/Architecture, Planning & Interiors, P.A.*, 148 F.Supp. 2d 607, 619 (W.D.N.C., 2001)(inferring that examples provided by the Court in *Reid* of attorney conduct not exempt from unfair and deceptive trade practice claim was dictum). However, the dictum provides little guidance since the analogies used apply to the legal profession rather than the medical profession, and in no regards are analogous to the facts of the present case.

*Cameron* provides a more accurate analysis of the learned profession exemption, but is no more advantageous to Plaintiff's case. In *Cameron*, a hospital amended its by-laws to eliminate all staff privileges for podiatrists working at the hospital. *Cameron*, 58 N.C.App. at 422-24, 293 S.E.2d at 907-908. Plaintiffs, two licensed podiatrists, then sued the hospital, alleging that the amendment came as the result of a conspiracy and other unfair or deceptive acts. *Id.* "Plaintiffs contend[ed] that the so-called learned profession exception...[did] not exclude defendants' alleged 'anticompetitive' conduct because that conduct involv[ed] 'commercial' activity, not the rendering of 'professional services.'" *Id.* at 446, 293 S.E.2d at 921. In holding that the learned profession exemption did apply, the Court concluded that the exemption could not be strictly separated along purely administrative versus purely medical lines. *Id.* at 446-47, 293 S.E.2d at 920-21. Rather, the crucial inquiry was whether the administrative functions were a necessary part of the medical services provided and "a necessary assurance of good health care". *Id.* The Court held that by amending it's by-laws so that podiatrist were not guaranteed staff privileges, the hospital was "acting in large measure pursuant to an 'important quality control component' in the administration of the hospital." *Id.* The Court concluded that the nature of being able to give consideration of "whom to grant hospital staff privileges is a necessary assurance of good health care." *Id.* at 447, 293 S.E.2d at 921.

In the present case, Plaintiff has alleged unfair and deceptive trade practices against the Defendants based on Defendants failure to take call coverage for Plaintiff and allegedly having secret meetings to discuss a merger with another obstetric and gynecological practice. (Compl. ¶¶ 18-19 and 23-26). Defendants refusal to take call coverage for Plaintiff originated as a result of Plaintiff's refusal to participate in the partnership effort to provide call coverage for Dr. Boyd. (Ans. ¶ 17). Defendants Dr. Bishopric, Dr. Boyd


and Dr. Merta were forced to meet and try to establish a call rotation between the three of them and Dr. Harraghy, if she decided to participate. (Ans. ¶ 18). This was done only after the Plaintiff refused to provide call coverage for Dr. Boyd. *Id.* What Plaintiff refers to as a secret meeting, was merely a meeting between Piedmont OB/GYN and the Defendants to discuss proposals for the doctors to share call coverage. (Ans. ¶ 28). Planned, consistent, and effective call coverage is a “necessary assurance of good health care.” Without effective call coverage, the quality of health care provided to patients would suffer drastically. As a result, Defendants in this case were acting pursuant to an important quality control component in the administration of their medical practice, just as the defendants in *Cameron*. In light of the foregoing, Plaintiff’s unfair and deceptive trade practices claim against Defendants should be dismissed, with prejudice.

### CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court dismiss, *with prejudice*, Plaintiff’s claim for Unfair and Deceptive Trade Practices.

Respectfully submitted this the 5<sup>th</sup> day of September, 2008.

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**CERTIFICATE OF SERVICE**

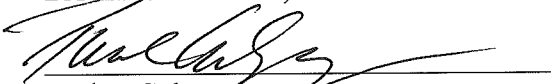
The undersigned, being an Attorney duly licensed to practice law in the State of North Carolina, does hereby certify that a copy of the foregoing **Reply Brief in Support of Defendants' Motion to Dismiss** was duly served upon J. Scott Hanvey, Esq. and Stephen L. Palmer, Esq. on the 5<sup>th</sup> day of September 2008, as follows:

  X   By depositing a copy of same in the United States Mail,  
first class postage prepaid, addressed to him as follow:

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