



# North Carolina Department of Correction v. North Carolina Medical Board, 363 N.C. 189 (N.C. 2009)

Topics Covered: Physician Participation in Capital Punishment

## **Outcome: Very Unfavorable**

### **Issue**

The issue in this case was whether the North Carolina Medical Board (“NCMB”) had the authority to discipline a physician for participating in a judicially ordered execution.

### **AMA Interest**

The AMA believes it is unethical for physicians to participate in capital punishment.

### **Case Summary**

North Carolina's Execution Statute provides for capital punishment by use of lethal injection. It requires the surgeon or physician of the penitentiary to be "present" at the execution and to "certify the fact" of the execution. Based on CEJA Ethical Opinion 2.06, NCMB adopted a Position Statement opposing physician participation in capital punishment except to the extent specifically required under the statute. The Position Statement declared that any participation other than that specifically required by the statute would violate medical ethics and could subject the physician to discipline by the NCMB.

The North Carolina Department of Correction challenged the NCMB's Position Statement as interfering with North Carolina's execution procedures, and it sued for a judicial declaration that the NCMB was invalid. Notwithstanding the deference normally accorded to a state administrative agency such as the NCMB to interpret a pertinent statute, the trial court enjoined NCMB's enforcement of its Position Statement, finding, among other things, that "judicial execution is not a medical event or medical procedure" and "judicial execution is outside the scope of [the North Carolina Medical Practice Act]." The NCMB appealed to the North Carolina Supreme Court.

The North Carolina Supreme Court affirmed the trial court, holding that judicially-ordered execution falls outside the practice of medicine and therefore outside the NCMB purview.

### **AMA Involvement**

The AMA filed an *amicus curiae* brief, which reiterated long standing AMA ethical policy prohibiting physician participation in capital punishment. It also argued that NCMB's Position

Statement was consistent with the autonomy of the medical profession in establishing and enforcing its own standards, including standards for determining what constitutes the practice of medicine.

North Carolina Supreme Court brief