

STATE OF NORTH CAROLINA  
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
09-CVS-01664

FRANKLIN WEFALD, M.D.,

Plaintiff,

v.

WAKE HEART AND VASCULAR  
ASSOCIATES, P.A., MICHAEL J.  
ZELLINGER, M.D., BRUCE W. USHER,  
M.D., ERIC M. JANIS, M.D., JOSEPH  
MICHAEL FALSONE, M.D., ROBERT  
LEE JOBE, M.D., and RAVISH  
SACHAR, M.D.,

Defendants.

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

THIS MATTER is before the Court on Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. After considering the pleadings and briefs submitted by counsel, the Court hereby GRANTS Defendants' Motion to Dismiss with respect to Counts 5 and 6 of the Complaint.

The Court finds the allegations in the Complaint insufficient to support a claim for relief under section 75-1.1 of North Carolina's Unfair and Deceptive Trade Practices Act ("UDTPA"). Several principles of North Carolina law support this finding. First, as a general rule, employer-employee relationships do not fall within the scope of the UDTPA when the alleged acts have no impact on commerce "beyond the parties' employment relationship." *HAJMM Co. v. House of Raeford Farms, Inc.*, 328 N.C. 578, 593, 403 S.E.2d 483, 492 (1991) (citation omitted); *Durling v. King*, 146 N.C. App. 483, 489, 554 S.E.2d 1, 5 (2001). Likewise, North Carolina courts also consider matters of internal corporate affairs outside the scope of the UDTPA. *Wilson v. Blue Ridge Elec. Membership Corp.*, 157 N.C. App. 355, 357-58, 578 S.E.2d 692, 694 (2003).

In further support of its dismissal of Count 5, the Court references the statutory language of the UDTPA, which expressly excludes medical professionals from the prohibitions within the UDTPA. *Gaunt v. Pittaway*, 139 N.C. App. 778, 783-84, 534 S.E.2d 660, 664 (2000). As the

North Carolina Court of Appeals recognized in *Gaunt*, allegations of defamation and slander brought against medical professionals are also excluded under this exemption. *See id.*

With respect to Count 6, the Court finds the allegations in the Complaint insufficient to support Plaintiff's claim for breach of fiduciary duty. Although directors of a corporation do owe a fiduciary duty to their corporations, no such duty is owed to individual shareholders. *See* N.C. Gen. Stat. § 55-8-30 (2007); *Governor's Club Inc. v. Governors Club Ltd. P'ship*, 152 N.C. App. 240, 248, 567 S.E.2d 781, 786–87 (2002). In those cases where North Carolina courts have recognized a fiduciary duty owed by corporate directors directly to minority shareholders, the corporate directors were *majority* shareholders. *See, e.g., Freese v. Smith*, 110 N.C. App. 28, 38, 428 S.E.2d 841, 848 (1993) (emphasis added). Plaintiff, however, has failed to allege that any of the directors in this case were majority shareholders.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' Motion to Dismiss Counts 5 and 6 of the Complaint is hereby GRANTED. Plaintiff still has adequate remedy in causes of action against the corporation.

IT IS SO ORDERED, this the 15th day of September, 2009.

/s/ Ben F. Tennille

The Honorable Ben F. Tennille  
Chief Special Superior Court Judge  
for Complex Business Cases