

JOSH STEIN  
ATTORNEY GENERAL



Phillip A. Rubin  
[prubin@ncdoj.gov](mailto:prubin@ncdoj.gov)

June 5, 2020

Sent by E-Mail

Mr. S. C. Kitchen  
Kitchen & Turrentine, PLLC  
920-C Paverstone Dr.  
Raleigh, NC 27615

**Re: Use of Indoor Gyms for Medical Care**

Dear Mr. Kitchen,

I write to provide detail on our statements during the June 4th hearing on *Smith v. Cooper* concerning usage of indoor gyms and fitness centers for medical purposes.

The Governor interprets Executive Order No. 141 to allow the use of indoor gyms or fitness facilities when that use is prescribed by or directed by a medical professional. This is consistent with Sections 1(5)(a) and 7(A)(2)(b) of Executive Order No. 141, which contain exceptions for health-care services and activities.<sup>1</sup> This understanding of Executive Order No. 141 applies even if the Court denies the *Smith* Plaintiffs' request for a temporary restraining order.

This exception applies, for example, to physical or occupational therapy ordered by a medical professional. In many cases, physical or occupational therapists' equipment is part of a hospital facility or doctor's office, but if health care professionals determine that specific patients with medical conditions need to utilize equipment at an indoor gym or fitness center, such care would not undermine the public-health rationale of the Phase Two order. Because the number of individuals taking advantage of this exception will be low, the risk to the public is reduced versus opening these facilities to the general public at this time. A broader opening, the Governor has concluded, would put the public at risk.

This exception is in addition to the numerous ways people can already meet their fitness needs generally, including outdoor recreation as well as using gym equipment in an outdoor environment. Likewise, Executive Order No. 141 does not prohibit health-care activities, such as seeking the care of a licensed physical therapist.

---

<sup>1</sup> The Governor's intent in this area was stated in Executive Order No. 121, which provided that its exception for health care activities "shall be construed broadly to avoid any impacts to the delivery of healthcare, or public health operations broadly defined." Executive Order No. 121, § 2(C)(3).

I wanted to make sure to put this clarification in writing after our conversations yesterday and today, in part to provide guidance to the public and in part because it appeared there may have been confusion during rebuttal concerning what we had acknowledged was allowed under the law. As I communicated to you this morning, we remain willing to work with your clients and others on understanding the options that are available and consistent with Executive Order No. 141.

Sincerely,

/s/ Phillip A. Rubin  
Phillip A. Rubin  
Special Deputy Attorney General  
Special Litigation Section