

***New State Hospital and Medical Service, Appellant,***

**v.**

***Diana SMITH, Respondent***

Former employee, a licensed certified public accountant (CPA), sued former employer for wrongful termination of employment. The District Court entered judgment for employer on all claims. Employee appealed. The Court of Appeals, affirmed in part, but reversed and remanded with respect to accountant's claim of wrongful discharge in violation of public policy. Certiorari was granted. The Supreme Court held that: (1) non-legislative sources, including State Board of Accountancy Rules of Professional Conduct, may constitute public policy for purposes of wrongful discharge claim; (2) "integrity and objectivity" provision of accountants' professional conduct rules was sufficiently clear mandate of public policy to sustain wrongful discharge claim; and (3) employee established prima facie case of wrongful discharge for her claim that she was fired for refusing to falsify accounting information in connection with proposed merger between employer and other health insurance providers. Affirmed and remanded with directions.

**The Opinion of the Court.**

We granted certiorari to review the court of appeals opinion, reversing the trial court's grant of a directed verdict against the plaintiff, Diana Smith, on her tort claim against her former employer, New State Hospital and Medical Service (NSHMS), for wrongful discharge in violation of public policy. The

court of appeals held that the New State Board of Accountancy Rules of Professional Conduct, specifically Rule 7.3, could establish public policy for purposes of a wrongful discharge claim. The court of appeals further held that Smith had produced sufficient evidence during her trial to establish that NSHMS fired her for refusing to violate this public policy. We affirm.

**I.**

Since this case was resolved on a directed verdict, the facts regarding Smith's retaliatory discharge claim must be viewed in the light most favorable to Smith. [\[FN1\]](#)

[FN1.](#) See *infra* part III. A, p.19.

Diana Smith is a licensed certified public accountant. In November of YR-15, NSHMS hired her as an at-will employee as manager of general accounting for their human resources department. In that position, Smith had financial reporting responsibilities for the company. According to Smith, those responsibilities included reporting all transactions involving the company's payroll expenses, premiums, revenues, and claims expense. In April of YR-12, NSHMS reassigned Smith to the position of manager of special projects. In this new position, Smith did not have any financial reporting responsibilities, but did have a general oversight role. Smith remained an at-will employee of NSHMS until her termination in February of YR-11.

At trial, Smith testified that during her employment with NSHMS she discovered and complained to her supervisors about questionable accounting practices. Her concerns included her observation that reimbursed expenses, such as moving expenses, were not properly noted on some of the IRS reports that NSHMS submitted. Smith

reported these concerns to her supervisor, Samuel Joseph. [\[FN2\]](#)

[FN2.](#) Smith's direct supervisor for both her positions and throughout most of her employment with NSHMS was Samuel Joseph.

She further complained to her supervisor [\[FN3\]](#) that NSHMS had reduced its fees for management services and office space charged to New State Life Insurance Company in order to make New State Life appear profitable and to preserve its B plus solvency rating. Smith told her supervisor that the adjustment violated generally accepted accounting principles because the reports then misrepresented the financial status of New State Life. Her supervisor responded that the adjustment was a business decision.

[FN3.](#) For a brief period applicable to this assertion, Smith's supervisor was Joe Hartley.

When she became manager of special projects Smith continued to object to NSHMS's accounting practices. Smith worked on two documents discussing the benefits of a proposed merger between NSHMS and Second State Blue Cross and Blue Shield and Third State Blue Cross and Blue Shield. The documents were to be submitted to the Board of Directors of NSHMS and ultimately to the New State Division of Insurance. [\[FN4\]](#) Smith's supervisor, Joseph, told her that she should identify and describe benefits of the merger in the documents. Smith informed Joseph that she was having difficulty uncovering any benefits of the merger. In response, Smith asserts that Joseph told her she would be fired if she was unable to quantify **\*522** concrete benefits of the merger.

Smith attempted to uncover some benefits, although she was ultimately unsuccessful. [\[FN5\]](#)

[FN4.](#) Ultimately, the documents were not submitted to the Division of Insurance and were used only for internal reference by NSHMS.

[FN5.](#) Smith testified that the reason she could not find any benefits for the proposed merger was that both Second State Blue Cross and Blue Shield and Third State Blue Cross and Blue Shield were insolvent. Thus, there would be no financial benefit for NSHMS to merge with these other companies.

Smith further testified that she objected to some of the representations that her supervisors made about the benefits of the merger within the documents. Smith explained that her supervisors deleted information she had included in the merger documents and substituted their own. Smith further stated that she believed that her supervisors had made what she considered to be inappropriate omissions and misrepresentations in the merger documents.

Smith testified that one of her duties was to compile a staffing analysis of Second State Blue Cross and Blue Shield. While compiling the analysis, Smith discovered that NSHMS had purchased a \$3.5 million computer for Second State Blue Cross and Blue Shield. Smith objected to this purchase because it was recorded as an asset on the books of Second State Blue Cross and Blue Shield. As an accountant, Smith considered it improper for an asset purchased by one entity to be recorded on the books of another separate

entity. Smith further objected to NSHMS not recording as liabilities certain discounts that NSHMS owed to other companies. She claimed that the omission misled NSHMS subscribers into believing that NSHMS had more funds in reserve to pay claims than it actually had.

As a result of reviewing the Third State Blue Cross and Blue Shield account, Smith learned that Third State had \$1.5 million of duplicate claim liability. Smith explained that between YR-15 and YR-12, Third State had collected \$1.5 million in overpayments but had not refunded the money. Smith brought this to the attention of Joseph, her supervisor, who declined to take any action to remedy the situation. Lastly, while reviewing Third State Blue Cross and Blue Shield's premium taxes, Smith discovered that the entity was improperly taking a home office tax credit. Smith reported to Joseph that Third State Blue Cross and Blue Shield was not entitled to that credit. Joseph told Smith that Third State Blue Cross and Blue Shield would take the credit anyway. Joseph ordered Smith to turn the work papers over to someone else.

Smith also complained about NSHMS's treatment of non-admitted assets on its financial statement. A non-admitted asset is a receivable that is outstanding for more than ninety days. In YR-14, NSHMS had loaned Second State Blue Cross and Blue Shield \$13.5 million through a surplus note. This note was not indicated on the NSHMS financial statement as a non-admitted asset. She objected to Joseph about this practice. Joseph told her that he believed it was proper not to list the note as a non-admitted asset.

On February 19, YR-11, NSHMS fired Smith. NSHMS told Smith that her job was being eliminated because of a restructuring within the finance department. Smith testified that her dismissal was the direct

result of her objections to NSHMS's irregular accounting practices. On June 11, YR-11, Smith filed suit against NSHMS and Joseph. She asserted five claims for relief: (1) breach of contract for wrongful discharge; (2) breach of implied contract and promissory estoppel for wrongful discharge; (3) retaliatory discharge in violation of the public policy exception to employment at-will; (4) tortious interference with contract by Samuel Joseph; and (5) outrageous conduct against Joseph. At the close of Smith's case, NSHMS and Joseph made a Motion for a Directed Verdict. The district court directed a verdict against Smith as to the breach of implied and express contract causes of action and the tortious interference with contract cause of action. The district court reserved judgment on Smith's promissory estoppel claim until the end of the trial and ruled that the outrageous conduct cause of action against Joseph should be submitted to the jury. In addition, the district court directed a verdict against Smith on her claim of retaliatory discharge in violation of public policy. \*523 Relying on [\*Martin Marietta v. Lorenz\*, 823 P.2d 100, \(New State YR-10\)](#), the trial court ruled that in order to establish a prima facie case of wrongful discharge in violation of public policy, Smith must allege that NSHMS had asked her to violate a specific public policy. In her complaint, Smith relied on the following sources of public policy to make her claim: [18 U.S.C. § 1001 \(YR-14\)](#) which prohibits the making of false statements to federal agencies; section 24-34-402, 10A New State Statutes (YR-7 Supp.), which provides a cause of action and remedies for discriminatory and unfair employment practices; section 10- 16-102, 4A New State Statutes (YR-8), which provides statutory definitions for the New State Health Care Coverage Act; and the New State Board of Accountancy Rules of Professional Conduct. The trial court considered each of these sources of public policy and held that none of

them could support Smith's claim for wrongful discharge in violation of public policy. After trial, the jury found for NSHMS and Joseph on Smith's outrageous conduct claim. The trial court ruled that Smith had failed to prove her claim of promissory estoppel and entered final judgment for NSHMS and Joseph on all counts.

Smith appealed the dismissal of her claims to the court of appeals. The court of appeals upheld the trial court's ruling regarding Smith's implied contract and promissory estoppel claims. The court of appeals reversed the directed verdict for NSHMS on Smith's claim that she had been wrongfully discharged in violation of public policy. The court of appeals held that the New State Board of Accountancy Rules of Professional Conduct, specifically Rule 7.3, was sufficient to establish public policy for purposes of a wrongful discharge claim. The court of appeals further held that Smith presented sufficient evidence to establish that she was fired for refusing NSHMS's requests to violate this rule. The court of appeals thus reversed the part of the trial court's ruling dismissing Smith's wrongful discharge claim in violation of public policy and remanded the case for a new trial.

NSHMS petitioned this court for certiorari review. We granted certiorari to determine the following:

1) Whether the first element of a public policy wrongful discharge claim can be satisfied based on an allegation that the employer required the employee to engage in conduct which allegedly violates the New State Board of Accountancy Rules and Regulations.

2) Whether an employee must prove that she refused to perform the act allegedly against public policy in order to establish the second and third elements of a public policy wrongful discharge claim.

We hold that the New State Board of Accountancy Rules and Regulations may constitute public policy for purposes of establishing a wrongful discharge claim in violation of public policy. We further hold that the plaintiff established a prima facie case of wrongful discharge under [Martin Marietta v. Lorenz, 823 P.2d 100, 109 \(New State YR-10\)](#). We therefore affirm the court of appeals and remand with directions to order a new trial on Smith's wrongful discharge claim.

## II.

[1] In general, employment contracts are at-will and either the employer or the employee may terminate the relationship at any time. In [Martin Marietta v. Lorenz, 823 P.2d 100, 109 \(New State YR-10\)](#), we recognized an exception to this general rule in situations where the employer terminated the employment contract in violation of public policy. The rationale underlying this exception was the long-standing rule that a contract violative of public policy is unenforceable. It is the manifest public policy of this state that an employee whether at will or otherwise, should not be put to the choice of either obeying an employer's order to violate the law or losing his or her job.

[2] The essence of the public policy exception is that an employee will have a cognizable claim for wrongful discharge if the \*524 discharge of the employee contravenes a clear mandate of public policy. Smith claims

that NSHMS terminated her for refusing to violate the New State Board of Accountancy Rules of Professional Conduct. In particular, Smith relies on Professional Rule 7.3 which prohibits a certificate holder from knowingly misrepresenting facts or subordinating their judgment to others. [\[FN6\]](#) At issue in this appeal is whether the New State Board of Accountancy Rules of Professional Conduct and in particular Rule 7.3 may constitute a clear mandate of public policy for the purpose of a wrongful discharge cause of action.

[FN6.](#) Rule 7.3 states:

*Integrity and Objectivity.*

A certificate holder shall not in the performance of professional services knowingly misrepresent facts, nor subordinate his judgment to others. In tax practice, however, a certificate holder may resolve doubt in favor of his client as long as there is reasonable support for his position.

Rule 7.3, 3 New State Regulations 705-1 (YR-11).

A.

[\[3\]](#) NSHMS argues that we should limit the sources of public policy for a wrongful discharge claim to constitutional or statutory provisions. NSHMS claims that ethical codes, such as the one upon which Smith relies, are too variable and ill-defined to provide employers and employees with fair notice as to what comprises public policy. We disagree.

We have never conclusively defined the sources of public policy for purposes of the public policy exception to employment at-

will. In [Martin Marietta v. Lorenz, 823 P.2d 100, 109 \(New State YR-10\)](#), we stated that in order to establish a prima facie case for wrongful discharge in violation of public policy, the employee must prove that " ... the action directed by the employer would violate a *specific statute* relating to the public health, safety, or welfare, or would undermine a *clearly expressed public policy* relating to the employee's basic responsibility as a citizen or the employee's rights as a worker...." (Emphasis added.) Although we suggested that public policy would generally be limited to specific statutory mandates, we left open the question of whether clearly expressed public policy might be manifested elsewhere.

Jurisdictions are split as to whether to recognize non-legislative sources of public policy. Some jurisdictions limit the sources of public policy to statutory or constitutional sources. [\[FN7\]](#) This limitation stems from concerns that an expansive definition of public policy would be both unwieldy and unpredictable leaving employers and employees alike without direction as to the contours of the public policy exception. However, even courts that limit the public policy exception to statutory and constitutional sources cannot escape that concern. The identification of the statutory or constitutional provisions that qualify as clear expressions of public policy is a matter for judicial determination. See [Brockmeyer v. Dun & Bradstreet, 113 Wis.2d 561, 335 N.W.2d 834, 841 \(YR-19\)](#) (stating: "The determination of whether the public policy asserted is a well-defined and fundamental one is an issue of law and is to be made by the trial court.").

[FN7.](#) See, e.g., [Gantt v. Sentry Ins., 1 Cal.4th 1083, 4 Cal.Rptr.2d 874, 881, 824 P.2d 680, 687 \(YR-10\)](#) (holding that the courts may not declare

public policy without a basis in either the constitution or statutory provisions); [Firestone Textile Co. Div. v. Meadows](#), 666 S.W.2d 730, 733 (Ky.YR-19)(indicating that public policy must be limited to a constitutionally protected right or statute); [Brockmeyer v. Dun & Bradstreet](#), 113 Wis.2d 561, 335 N.W.2d 834, 840 (YR-19) (holding that public policy must be evidenced by constitutional or statutory provisions).

Other jurisdictions have recognized that non-legislative sources, including professional ethical codes, may provide the basis for a public policy claim. [FN8] Courts that have recognized \*525 ethical codes as a potential source of public policy have noted that employees who are professionals have a duty to abide not only by federal and state law but also by the recognized codes of ethics of their professions. [Pierce v. Ortho Pharmaceutical Corp.](#), 84 N.J. 58, 417 A.2d 505, 512 (YR-22); *see generally* Lawrence E. Blades, *Employment At Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power*, 67 Colum.L.Rev. 1404 (YR-35). As these ethical codes are central to a professional employee's activities, there may be a conflict at times between the demands of an employer and the employee's professional ethics.

**FN8.** *See, e.g., Boyle v. Vista Eyewear, Inc.*, 700 S.W.2d 859, 871 (Mo.Ct.App.YR-17) (holding that public policy may be found in letter or purpose of constitutional, statutory, or regulatory provisions; in judicial

decisions of state; and, in certain instances, in professional codes of ethics); [Cloutier v. Great Atlantic & Pacific Tea Co.](#), 121 N.H. 915, 436 A.2d 1140, 1144 (YR-21) (holding that public policy exception is not limited to legislative directives); [Pierce v. Ortho Pharmaceutical Corp.](#), 84 N.J. 58, 417 A.2d 505, 512 (YR-22) (holding that sources of public policy include legislation, administrative rules, regulations or decisions, and judicial decisions and in certain instances a professional code of ethics); [Payne v. Rozendaal](#), 147 Vt. 488, 520 A.2d 586, 588 (YR-16) (holding that absence of statutory directive is not dispositive of whether there is a public policy against the directive).

A professional employee forced to choose between violating his or her ethical obligations or being terminated is placed in an intolerable position. *See General Dynamics v. Superior Ct.*, 7 Cal.4th 1164, 32 Cal.Rptr.2d 1, 15, 876 P.2d 487, 501 (YR-8). It is just such a situation that the public policy exception was meant to prevent. As we stated in [Lorenz](#), "an employee should not be put to the choice of either obeying an employer's order to violate the law or losing his or her job." 823 New State at 109. As is clear from the above discussion, the term public policy is not subject to precise definition. [Petermann v. International Bhd. of Teamsters](#), 174 Cal.App.2d 184, 344 P.2d 25, 27 (YR-43). A common requirement in cases discussing the issue is that public policy must concern behavior that truly

impacts the public in order to justify interference into an employer's business decisions. In addition, public policy must be clearly mandated such that the acceptable behavior is concrete and discernible as opposed to a broad hortatory statement of policy that gives little direction as to the bounds of proper behavior. [\[FN9\]](#)

[FN9. Compare \*Cronk v. Intermountain Rural Elec. Ass'n\*, 765 P.2d 619 \(New State Court of Appeals YR-14\)](#) (statutes prohibiting employee from lying before Public Utility Commission and awarding preferences to developers constituted public policy) *with* [Lampe v. Presbyterian Medical Ctr.](#), 590 P.2d 513 (New State Court of Appeals YR-24) (statute allowing State Board of Nursing the power to revoke a nursing license if the nurse has negligently or willfully acted in a manner inconsistent with the health or safety of persons under his or her care did not constitute public policy).

Statutes by their nature are the most reasonable and common sources for defining public policy. In limited circumstances, however, we agree with the jurisdictions that hold there may be other sources of public policy such as administrative regulations and professional ethical codes. However, we quickly note that even those courts that have adopted ethical codes as a source of public policy have not done so without limitation. *See* [Pierce](#), 417 A.2d at 512. In particular, in order to qualify as public policy, the ethical provision must be designed to serve the interests of the public rather than the interests of the profession. The provision may not

concern merely technical matters or administrative regulations. In addition, the provision must provide a clear mandate to act or not to act in a particular way. Finally, the viability of ethical codes as a source of public policy must depend on a balancing between the public interest served by the professional code and the need of an employer to make legitimate business decisions. We also adopt these limitations as a prudent check on the public policy exception to employment at-will.

Thus, we hold that professional ethical codes may in certain circumstances be a source of public policy. However, we emphasize that any public policy must serve the public interest and be sufficiently concrete to notify employers and employees of the behavior it requires. We now turn to the issue of whether Rule 7.3 of the New State Board of Accountancy Rules of Professional Conduct is of sufficient clarity and public value to qualify as an expression of public policy.

#### B.

[\[4\]](#) NSHMS argues that the New State Board of Accountancy Rules of Professional Conduct are not clear mandates of public **\*526** policy but rather broad aspirational statements that cannot support a public policy claim. We disagree.

The New State Board of Accountancy is established pursuant to [section 12-2-103](#), 5A New State Statutes (YR-11). The Board has responsibility for making appropriate rules of professional conduct, in order to establish and maintain a high standard of integrity in the profession of public accounting. [§ 12-2-104](#), 5A New State Statutes (YR-11). These rules of professional conduct govern every person practicing as a certified public accountant. *Id.* Failure to abide by these rules may result in

professional discipline. § 12-2-123, 5A New State Statutes (YR-11).

The rules of professional conduct for accountants have an important public purpose. They ensure the accurate reporting of financial information to the public. They allow the public and the business community to rely with confidence on financial reporting. Rule 7.1, 3 New State Regulations 705-1 (YR-11). In addition, they ensure that financial information will be reported consistently across many businesses. The legislature has endorsed these goals in [section 12-2-101](#), 5A New State Statutes (YR-11), which includes the legislative declaration for establishing the Board of Accountancy. [Section 12-2-101](#) states in pertinent part:

It is declared to be in the interest of the citizens of the state of New State and a proper exercise of the police power of the state of New State to provide for the licensing and registration of certified public accountants, ... to provide for the maintenance of high standards of professional conduct by those so licensed and registered as certified public accountants.

Given this legislative declaration and the purposes of the rules of professional conduct for accountants, we hold that the rules have a sufficient public purpose to constitute public policy.

[5] Further, we conclude that Rule 7.3 [\[FN10\]](#) of the New State Board of Accountancy Rules of Professional Conduct is a sufficiently clear mandate of public policy to sustain a wrongful discharge cause of action. Rule 7.3 is entitled "Integrity and Objectivity" and states:

[FN10](#). Smith also offered Rules 7.8 and 7.11 as sources

of public policy; however, her principal argument before both the court of appeals and this court focused on Rule 7.3 only and we confine ourselves to that Rule here.

A certificate holder shall not in the performance of professional services knowingly misrepresent facts, nor subordinate his judgment to others. In tax practice, however, a certificate holder may resolve doubt in favor of his client as long as there is reasonable support for his position. Rule 7.3, 3 New State Regulations 705-1 (YR-11). This rule mandates accuracy in financial reporting and furthers the laudable goal of establishing public confidence in financial reporting. The rule specifically directs an accountant to refrain from knowingly misrepresenting facts. The clear purpose of this rule is to prohibit accountants from falsifying information when completing tasks. The rule also directs accountants not to subordinate their judgment to others, such that an accountant may not succumb to pressure from his or her employer to misrepresent facts or deviate from generally accepted accounting principles. Both of these proscriptions provide clear direction to an accountant as to the scope of duty, and clear notice to an employer that accountants have a duty to report financial information fairly and accurately.

Thus, we hold that Rule 7.3 represents a clear mandate of public policy for purposes of establishing a claim for wrongful discharge in violation of public policy. Smith was entitled to rely on this rule for purposes of her suit against NSHMS. We affirm the court of appeals in its holding that the New State Board of Accountancy Rules of Professional Conduct and Rule 7.3 in particular can be an adequate source of public policy for a wrongful discharge claim.



III.  
A.

[S.Ct. 1307, 1310, 134 L.Ed.2d 433 \(YR-6\).](#)

[6] [7] Having resolved the public policy question, we must now address the factual posture of Smith's case before the trial court on motion for directed verdict. Preliminarily, we note that directed verdicts are not favored. When a plaintiff makes out a prima \*527 facie case, even though the facts are in dispute, it is for the jury, and not the judge, to resolve the conflict.

[8] A reviewing court must consider all of the facts in the light most favorable to the nonmoving party, and determine whether a reasonable jury could have found in favor of the nonmoving party. This court described the second component of that analysis in [McGlasson v. Barger](#):

A motion for directed verdict can only be granted where the evidence, when so considered, compels the conclusion that the minds of reasonable men could not be in disagreement and that no evidence, or legitimate inference arising therefrom, has been presented upon which a jury's verdict against the moving party could be sustained. [163 New State 438, 442, 431 P.2d 778, 779 \(YR-35\).](#) [FN11]

[FN11]. In a recent Supreme Court opinion, Justice Scalia indicated that in order to establish a prima facie case of age discrimination, the plaintiff need only present enough evidence to "create an inference" that the employment decision was based on discriminatory criteria. [O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 878, ----, 116](#)

B.

[9] [10] The issue before the trial court on directed verdict was whether Smith had presented a prima facie case for wrongful discharge. Based on today's discussion, the elements of a wrongful discharge claim can be summarized as follows: (1) the employer directed the employee to perform an act that would violate a statute or clearly expressed public policy; (2) the employee was terminated as a result of refusing to perform the act; and (3) the employer was aware or should have been aware that the employee's refusal was based upon the employee's reasonable belief that the act was either illegal or against public policy.

The trial court granted NSHMS's motion for directed verdict solely on the grounds that Smith failed to present evidence that the actions directed by her employer would violate a statute or clearly expressed public policy. We now conclude that Rule 7.3 is an expression of public policy, thereby overturning the trial court on that basis. We also briefly consider whether Smith has presented sufficient evidence to establish a prima facie case of wrongful discharge in violation of public policy. NSHMS argues that Smith failed to show that her supervisors directed her to perform an act against public policy and that she refused to do so. We disagree.

[11] [12] Smith presented evidence from which a reasonable jury could have concluded that NSHMS dismissed her for her refusal to falsify accounting information. For instance, while she was working on the proposed merger between NSHMS, Second State Blue Cross and Blue Shield and Third State Blue Cross and Blue Shield, Smith's supervisor told

her to identify benefits of the proposal. When she told her supervisor that she had tried to find benefits of the merger but was unable to do so, she testified that she was informed that she should not be working at NSHMS. Taken in the light most favorable to Smith, that evidence would indicate that she was directed to identify benefits of the merger plan or face job termination. She refused [FN12] to agree to what she perceived to \*528 be false benefits that would contravene the rules of professional conduct for accountants; she was unable to identify any other benefits, and she was later terminated. [FN13] Such evidence satisfies the elements for purposes of our limited consideration on appeal of a directed verdict.

[FN12]. NSHMS argues that Smith objected to various accounting practices, but did not outright refuse to undertake them. First, we note that "refuse" is defined as: 1. to avoid or shun; 2. to decline to accept; and 3. to show or express a positive unwillingness to do or comply with. Webster's Third New International Dictionary 1910 (YR-41). Clearly, if Smith objected to the accounting practices and did not participate in them or by inaction declined to undertake them, she satisfied the refusal component. Refusal is not limited to the verbal expression of refusal, but can consist of inaction as well. The objections Smith voiced about the practices to her supervisors similarly satisfied the requirement that the employer was aware or should have been

aware of the reason for the refusal.

[FN13]. Since Smith presented sufficient evidence to establish that she actually refused her employer's directives to violate public policy, we decline to decide whether mere objection without other manifestation of refusal would alone satisfy the second and third elements.

#### IV.

In conclusion, we hold that professional codes may be a source of public policy for purposes of a claim of wrongful discharge in violation of public policy. Smith properly relied on Rule 7.3 of the New State Board of Accountancy Rules of Professional Conduct as a source of public policy. She further presented evidence sufficient to satisfy the prima facie requirements. On the evidence Smith adduced at trial, reasonable jurors could differ as to whether she was wrongfully discharged by NSHMS. Therefore, jurors--not judges--must be allowed to make that ultimate determination. We affirm the court of appeals and remand with directions to order a new trial on Smith's wrongful discharge claim.