Office of Policy Planning Bureau of Competition Bureau of Economics

April 26, 2012

The Honorable Patricia Todd Representative, Alabama House of Representatives 1320 58th Street, South Birmingham, Alabama 35222

Dear Representative Todd:

7 KH VWDIIV RIWKH) HGHUDO 7 UDGH & RPPLVVLRQ¶V 211L Competition, and Bureau of Economics¹ appreciate the opportunity to respond to your invitation for comments on Alabama House Bill 156 ³ WKH %HBOISS *"RCW* reft Alabama law prohibits veterinarians from being employed by non-veterinarians, unless covered by an exemption under the law. The Bill would add an exemption to allow veterinarians to be employed by a limited services 501(c) (3) nonprofit facility, as defined under Section 501(c) (3) of the Internal Revenue Code,² that performs only spay and neuter surgeries and vaccinations given at the time of surgery, designates a licensed veterinarian to supervise veterinary medical practice, and has received an approved premises permit from the Board of Veterinary Medical ([DPLQHUV ¥%uRaDeLasSed FTC staff to analyze + % ¶V OLNHO\ HIIHFWV R competition.³ business practices of state-licensed professionals to state legislatures, administrative agencies, and others.⁷

The Commission has challenged rules prohibiting professionals from entering into business relationships with non-professionals when such rules were imposed by an entity subject WR WKH & RPPLVVLRQ¶V ODZ HQIRUFHPHQW MXULVGLFWLRQ \$PHULFDQ 0HGLFDO \$VVRFLDWLRQ¶V \$0\$ HWKLFDO FRGH \$ from working on a salaried basis for hospitals or other lay institutions and from entering into partnerships or similar business relationships with non-physicians, unreasonably restrained competition and violated federal antitrust laws.⁸ The Commission also found there were no countervailing procompetitive justifications for these restrictions.⁹ Similarly, the Commission sought and obtained an order against the Oklahoma State Board of Veterinary Medical Examiners ³2NODKRPDto ft WKH & RPPLVVLRQkft Momb OOHJDWLR % RDUG¶V UXOHV ZKLFK UHVWULFWHG YHWHULQDULDQV IUF otherwise associated with non-veterinarians or veterinarians licensed in other states, constituted anticompetitive conduct.¹⁰

II. CURRENT PRACTICE ACT, HB 156, AND CURRENTLY LICENSED CLINICS

The Alabama Veterinary Practice Act currently prohibits veterinarians from being employed by non-veterinarians, unless covered by one of four exemptions in the Act.¹¹ HB 156 would add an exemption to allow veterinarians to be employed by 501(c) (3) nonprofit facilities that perform only spay and neuter surgeries and vaccinations only at the time of surgery, provided that ³D OLFHQVHG YHWHULQDULDQ LV of estational JQDWHG WR X VXSHUYLVLRQ RI WKH YHWHULQDU\ PHGLFDO VHUYLFHV RI V all spay and neuter services; the facility obtains a premises permit from the Board; and the facility meets the minimum standards set by rule of the Board for premises where veterinary medicine is practiced.¹² In fact, since 2007, the Alabama Board of Veterinary Medical Examiners has already conducted inspections of, and issued permits to, four nonprofit spay and neuter clinics in Alabama.

III. LIKELY COMPETITIVE EFFECTS OF HB 156

FTC staff recognize that certain professional licensure requirements are necessary to protect consumers. Restrictions on how professionals organize their practices, however, may be unnecessary to protect consumers. Instead, these types of restrictions may reduce competition and consumer choice by preventing the emergence of new, more efficient forms of professional practices. We urge legislators to consider the potential procompetitive benefits of HB 156, including lower prices, improved access, and increased choices for consumers. We suggest you also consider whether the existing restrictions are necessary for consumer protection.¹³

relationships, including employment, with non-licensed persons or firms. But one important effect of such restrictions in licensed businesses is often to reduce competition and increase prices.¹⁵

In a letter commenting favorably on a proposed bill in Tennessee that would lift restrictions on veterinarians being employed by non-veterinarians,¹⁶ FTC staff pointed out that ³ r]estrictions on these types of business formats may prevent the formation and development of forms of professional practice that may be innovative and efficient, provide comparable quality service, and offer competition to traditional providers.¹⁷ Studies have shown that such restrictions can act as barriers to entry by new competitors, and consumers may end up paying higher prices

Respectfully submitted,

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Richard A. Feinstein, Director Bureau of Competition

Joseph Farrell, Director Bureau of Economics

¹ 7 KLV VWDII OHWWHU H[SUHVVHV WKH YLHZV RI WKH)HGHUDO 7 UD of Competition, and Bureau of Economics. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission, however, has voted to authorize staff to submit these comments.

² 26 U.S.C. §501(c) (3) W D [H [H P S W R U J **D**@pbr]atDot/s L R @Qahizte@atfid@per@idd ³ exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition d,atel h0 0 1 4202(pe)15(t)-7(i)-7(i)-7(i)to auu11(o)24(r)-23()12(t)-7(MM3)23(e)

the Honorable John T. Bragg Concerning Tennessee H.B. 2542 Allowing Veterinarians to be Employed by Non-Veterinarian Corporations (Feb. 1996) (V960005) (commenting favorably on a bill to eliminate restrictions on veterinarians being employed by non-veterinarians), *available at* http://www.ftc.gov/be/v960005.shtm; FTC Staff Comment Before the Texas Sunset Advisory Committee Concerning its Review of Boards that Regulate Health Professions (Aug. 1992) (comments on review of legislation governing various professional boards, including veterinarians, physicians, and dentists, noting ³ V W X G L H V K D Y H I R X Q G O LstMidtMoQs bh U H O D W L R Q V K L S U R I H V V L R Q D O V ¶ E X V L Q H V V S U D F W *lvfailtable dD* Q G W K H T X D O L W \ R I F D U H S L http://www.ftc.gov/be/healthcare/docs/AF%2017.pdf">http://www.ftc.gov/be/healthcare/docs/AF%2017.pdf. See also FTC Comment Before the Texas Board of Veterinary Medical Examiners Concerning Rule 573.17 on Animal Teeth Floating (Sep. 2010) (V100015) (noting that restricting the practice of teeth floating to veterinarians O L N H O \ Z R X O G ³ H O L P L Q D W H L P S R U W D Q veterinarian and non-ve W H U L Q D U L D Q W H H W K I O R D W H U V O L N H O \ U H G X F L Q J 7 H [D V W K H \ P X V W S D \ attractionarian and non-ve W H U L Q D U L D Q W H H W K I O R D W H U V O L N H O \ U H G X F L Q J 7 H [D V W K H \ P X V W S D \ attractionarian and non-ve W H U L Q D U L D Q W H H W K I O R D W H U V O L N H O \ U H G X F L Q J 7 H [D V W K H \ P X V W S D \ attractionarian and non-ve W H U L Q D U L D Q W H H W K I O R D W H U V O L N H O \ U H G X F L Q J 7 H [D V W K H \ P X V W S D \ attractionarian and non-ve W H U L Q D U L D Q W H H W K I O R D W H U V O L N H O \ U H G X F L Q J 7 H [D V W K H \ P X V W S D \ attractionarian and non-ve W H U L Q D U L D Q W H H W K I O R D W H U V O L N H O \ U H G X F L Q J 7 H [D V W K H \ P X V W S D \ attractionarian and non-ve W H U L Q D U L D

⁸ \$ PHULFDQ 0HGLFDO \$ V V ¶ Qff'd 638)F.**2**d **&**43 (2d Cir. 1980), aff'd mem. by an equally divided court, 455 U.S. 676 (1982).

⁹ \$PHULFDQ 0HGLFDO \$V V1\$8,02015-101)8 (7/he&Combinivesion also FRQFOXGHG WKH \$0\$¶ \

be performed at the time of surgery, provided that the veterinarian documents those treatments or procedures. It shall be unlawful for any person other than the licensed veterinarian to make any policy or decision relating to the medical treatment of an animal including, but not limited to, decisions relating to the number of surgeries to be performed per day and the number of auxiliary veterinary medical personnel, licensed veterinary technicians, and unlicensed veterinary assistants necessary to provide adequate surgery services at the clinic. Each licensed veterinarian employed