Office of Policy Planning
Bureau of Economics
Bureau of Competition

UNITED STATES OF AMERICA

FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

November 3,2010

Patricia E. Shaner, Office of General Counsel
Alabama State Board of Medical Examiners
Post Office Box 946
848 Washington Avenue (36104)
Montgomery, Alabama 36101-0946

Dear Ms. Shaner:

The staffs of the Federal Trade Commission's Office of Policy Planning, Bureau of Economics, and Bureau of Competition I appreciate this opportunity to comment on the proposed regulation of interventional pain management services (Proposed Rule) issued

patients and others with chronic pain, rural Alabamans and others whose access to health care, or ability to pay for it, is limited, and hospice patients.

We therefore urge the Board to consider carefully the impact of the Proposed Rule and to avoid adopting provisions that would limit the role of CRNAs in pain management more strictly than patient protection requires. The Proposed Rule provides no evidence that the current practice has harmed patients. Further, studies that have examined CRNA provision of anesthesia services have not found safety or quality defects in CRNA practice. 6

Interest and Experience of the Federal Trade Commission

The FTC is charged under the FTC Act with preventing unfair methods of competition
and unfair or deceptive acts or practices in or affecting commerce.

7 Competition is at the core of
America's economy,8 and vigorous competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, more choices, and greater innovation. Because of the importance of health care competition to the economy and consumer welfare, anti competitive conduct in health care markets has long been a key target of FTC law enforcement,9 research,lO and advocacy, such as this letter. 1 1 Recently, FTC staff have
urged several states to reject or narrow restrictions that limit health care access and raise prices to
consumers by limiting competition among health care providers and professionals. 12

6 See, e.g., A.F. Smith, et al., Comparative Effectiveness and Safety of Physician and Nurse Anaesthetists: A
Narrative Systematic Review, 93 BRIT. J. ANAESTHESIA 540, 544 (2004) (review article examining U.S. and foreign
studies finding "no recent, high-level evidence that there are significant differences in safety between different
anaesthesia providers"); Paul th 9.oviders m ("no gician)Tc 9.5969 0 0 9233c 4.ders m ("nm (et)Tj ET BT /Suspect <</Conf 0 >>BDC /T1_0

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diagnosis and treatment of pain-related disorders with the application of interventional techniques in managing subacute, chronic, persistent, and intractable pain.,,20 The Proposed Rule also includes examples of "interventional techniques," which

often involve injection of steroids, analgesics, and anesthetics and include:
lumbar, thoracic, and cervical spine injections, intra-articular injections,
intrathecal injections, epidural injections (both regular and transforaminal), facet
injections, discography, nerve destruction, occipital nerve blocks, lumbar
sympathetic blocks and vertebroplasty, and kyphoplasty.21

The Proposed Rule also provides a non-exhaustive list of several dozen specific interventions.22

Because the proposed rule effectively prohibits non-physicians from providing
interventional pain treatment, and physicians from delegating authority to provide such treatment to other licensed health care professionals, the Proposed Rule appears to prevent CRNAs from performing many of the pain management procedures that the Board of Nursing considers to be within the scope of CRNA practice in Alabama, subject to physician supervision?3 For example, the scope of CRNA practice includes "intradermal, subcutaneous, or intramuscular administration of a local anesthetic agent in a specified amount designated by order of a licensed physician or dentist," and "the monitoring and adjustment oflocal anesthetic agent(s) and analgesic agent(s) infusing via an epidural, brachial plexus, or femoral catheter placed by a qualified [CRNA] or qualified licensed physician may be performed by a registered nurse ... as ordered by a licensed prescriber.,,24

19 It is not clear from the plain language of the Proposed Rule whether "interventional treatment of pain" is meant to be co-extensive with "interventional pain management" or a broader concept that includes it.

20 Proposed Rule at 540-X-15-.02.
21 !d.

22 Specific interventions include SI joint injections; spinal punctures; epidural blood patches; epidural
injections; epidural/spinal injections; lumbar injections; epidural/subarachnoid catheters; occipital nerve
blocks; axillary nerve blocks; intercostal nerve blocks; multiple intercostal nerve blocks; ilioinguinal nerve blocks; peripheral nerve blocks; facet joint injections; cervical/thoracic facet joint injections; lumbar facet injections; multiple lumbar facet injections; transforaminal epidural steroid injections; transforaminal
cervical steroid injections; sphenopalatine ganglion blocks; paravertebral sympathetic blocks; neurolysis of
the lumbar facet nerve; neurolysis of the cervical facet nerve; and destruction of the peripheral nerve.
Proposed Rule at 540-X-15-.02.

23 See, e.g., In re Steve Sykes, MD, supra note 5 (enumerating various interventional pain management procedures within the scope ofCRNA practice).

24 Supra note 5, at 4. The Board of Nursing reports that, when it recently invited public comment regarding revisions to the pertinent standards of practice, the Board of Medical Examiners did not question CRN A qualification to perform such procedures. Id. at 5 (regarding November 2009 letter submitted by Board of Medical Examiners Executive Director, Larry Dixon).

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II. Consumer Protection Concerns and the Scope of Practice Patient safety or consumer protection concerns can justify licensure