UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Competition
Bureau of Economics

December 2, 2013

Sherin Tooks, Ed.D., M.S.
Director, Commission on Dental Accreditation
211 East Chicago Avenue, 19th Floor
Chicago, IL 60611

Dear Dr. Tooks:

The staffs of the Federal Trade Commission Office of Policy Planning, Bureau of Economics, and Bureau of Competition[1] (collectively, "FTC staff") appreciate the opportunity to comment on the *Accreditation Standards for Dental Therapy Education Programs* proposed by the Commission on Dental Accreditation ("CODA").[2] Dental therapists are a relatively new type of "mid-level" provider that offers some of the same basic dental services offered by dentists.

As currently worded, however, the proposed CODA accreditation standards might be interpreted in ways that could impede competition. For example, the proposed standards state that diagnosis and treatment planning are the responsibility of a supervising dentist, even though such statements ordinarily are not found in the accreditation standards of education programs for other allied dental professionals who are also supervised by dentists. Such statements could have two interrelated effects. First, they may constrain states' discretion to select the level of supervision that they determine is appropriate for different types of dental training programs that they may create, and to define broadly dental therapists' scope of practice to include oral evaluation and treatment planning. Accordingly, we are concerned that such statements may hamper efforts to promote the use of dental therapists to enhance competition and expand access to dental services, especially in underserved areas where dentists are scarce or unavailable. Second, such statements may deter the development of dental education programs that would

train dental therapists to provide such services under the level of supervision required by each state. For example, if the statements are interpreted by educators to preclude dental therapists from conducting an oral evaluation and developing a treatment plan, and to require on-site dentist supervision during an evaluation or procedure – even when states determine that patient safety may not require such restrictions –it may result in less development of innovative provider models and education programs that are intended to better address dental care needs.

As discussed below in greater detail, to preserve flexibility at the state level and to foster innovation in dental care education and delivery models, we encourage CODA to consider two specific recommendations as part of its deliberations on the proposed standards:

> CODA should consider omitting categorical statements regarding a supervising dentist's responsibility for diagnosis and treatment planning, topics that are typically addressed by individual states in their licensure and scope of practice laws; and
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> CODA should consider developing accreditation standards for master's or graduate level programs that train dental therapists to conduct oral evaluations and develop treatment plans without requirements for an on-site supervising dentist or at other supervisory levels that have been adopted by states.

This comment does not advocate a simple or uniform model for how best to define the

Minnesota's legislation created two types of mid-level oral health professionals: Dental Therapists ("DTs") and Advanced Dental Therapists ("ADTs"). The law authorizes both DTs and ADTs to provide basic preventive and limited restorative services, and provides them with limited authority to write prescriptions.[19] DTs and ADTs are also "limited to primarily practicing in settings that serve low-income, uninsured, and underserved patients or in a dental health professional shortage area."[20]

Under Minnesota law, ADTs can carry out all evaluative, preventative, restorative, and surgical procedures within their scope of practice, including "an oral evaluation and assessment of dental disease and the formulation of an individualized treatment plan," under "general supervision," which means that the supervising dentist need not be on the premises when a procedure is performed.[21] Minnesota law further provides that DTs can carry out many evaluative and preventative services under general supervision. Most basic restorative and surgical services within a DT's scope of practice must be performed under "indirect supervision," with a dentist on

subject of allied dental education accreditation standards.[51]

FTC staff suggests that CODA not take the unusual step of including supervision and scope of practice limitations in an education program accreditation standard. These statements, while not binding on state legislatures, could effectively constrain the discretion of the states in defining scope of practice and supervisory requirements for dental therapists. Without the statements on the role of a supervising dentist in diagnosis and treatment planning, states would

Respectfully submitted,

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[1] This letter expresses the views of the Federal Trade Commission's Office of Policy Planning, Bureau of Economics, and Bureau of Competition. The letter does not necessarily represent the views of the Federal Trade Commission ("Commission" or "FTC") or of any individual Commissioner. The Commission has, however, voted to authorize us to submit these comments.

[2] COMM'N ON DENTAL ACCREDITATION ("CODA"), ACCREDITATION STANDARDS FOR DENTAL THERAPY EDUCATION PROGRAMS (2013), http://www.ada.org/sections/educationAndCareers/pdfs/proposed_dental_therapy.pdf [hereinafter CODA, ACCREDITATION STANDARDS]. CODA is a commission of the American Dental Association ("ADA"), the dentists' trade organization. *See* ADA, CONSTITUTION AND BYLAWS 16 (2013) ("The name of this Association shall be: Commission on Dental Accreditation . . . ."); *See also* Karen Fox, *How CODA works*, ADA NEWS, Sept. 5, 2011, http://www.ada.org/news/6179.aspx (quoting Dr. Roger Kiesling, "CODA is an agency of the ADA . . . .").

[3] FTC Act, 15 U.S.C. § 45 (2012).

[4] Standard Oil Co. v. FTC, 340 U.S. 231, 248 (1951) ("The heart of our national economic policy long has been faith in the value of competition.").

[5] *See generally* FTC STAFF, OVERVIEW OF FTC ANTITRUST ACTIONS IN HEALTH CARE SERVICES AND PRODUCTS (2013), http://www.ftc.gov/bc/healthcare/antitrust/hcupdate.pdf.

[6] *See, e.g.*, FTC & U.S. DEP'T OF JUSTICE ("DOJ"), IMPROVING HEALTH CARE: A DOSE OF COMPETITION (2004), http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf.

the procedures are being performed by the allied dental personnel."). *See also* MINN. STAT. § 150A.105, subdiv. 4 (2013) (DT scope of practice and supervision).

[23] *See, e.g.*, BURTON L. EDELSTEIN, W.K. KELLOGG FOUND., TRAINING NEW DENTAL HEALTH PROVIDERS IN THE U.S. 7 (2010).

[24] *See* MINN. STAT. § 150A.105, subdiv. 3; § 105A.106, subdiv. 2, 3 (2013). Although Minnesota enacted laws requiring certain levels of supervision and a cooperative management agreement between dental therapists and dentists, other states may make different choices

a dentist within the parameters of a collaborative agreement"), § 561(8) ("'General supervision' . . . need not be on-site"); H.B. 1516, 63rd Leg., Reg. Sess.

[58] INST. OF MED. & NAT'L RESEARCH COUNCIL, supra note 52, at 133. *See1 08 Yo*

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