



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

Office of Policy Planning
Bureau of Competition
Bureau of Economics

December 30, 2010

Mr. Randall Vaughn
Division Director
Secretary of State
Professional Licensing Boards Division
Georgia Board of Dentistry
237 Coliseum Drive
Macon, GA 31217

Dear Mr. Vaughn,

The staffs of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, and Bureau of Economics appreciate this opportunity to provide our comments on the Georgia Board of Dentistry's proposed amendments to board rule 150-5-.03 Supervision of Dental Hygienists.¹ Current board rules permit dental hygienists to provide certain dental services, such as sealant and fluoride treatments, without the direct supervision of a dentist at approved dental facilities of the Georgia Department of Community Health, county boards of health, and the Department of Corrections.

The proposed amendments will require the indirect supervision of a dentist for dental hygienists performing permitted treatments at approved facilities. This proposed change could be interpreted to require a dentist's initial diagnosis of all patients at such facilities before they can receive any specific treatment from a dental hygienist.

The Notice cites no evidence of past or future harm from current practices, and FTC staff is unaware of any such evidence. Thus, we urge the Board to reject the proposed amendments. Requiring dental hygienists to provide covered services only with the indirect supervision of a dentist will likely raise the cost of these services and result in fewer persons receiving them at approved facilities.

We are particularly concerned about the possible negative effects of the proposed amendments on vulnerable populations. The Surgeon General has found that "a 'silent

¹ Georgia Board of Dentistry, Notice of Intent to Adopt Amendments to the Georgia Board Dentistry Board Rules 150-3-.01 *Examination of Dental Licensure* 150-5-.03 *Supervision of Dental Hygienists*, and Notice of Public Hearing (Dec. 2010) ("Notice"), available at http://sos.georgia.gov/plb/dentistry/proposed_amendments.htm.

epidemic' of oral diseases" affects our most vulnerable citizens, including poor children, the elderly, and many members of racial and ethnic minority groups.² The lack of dental care is a particular problem for children in rural and low-income urban communities.³ Dental hygienists play an important role in delivering dental care to these communities.

Section I of these comments summarizes the interest and experience of the Federal Trade Commission. Section II discusses the proposed amendments.

I. 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.⁴ Anticompetitive conduct in health care markets has long been an area of focus for the FTC's law enforcement, research, and advocacy activities.⁵

For example, in 2003 the Commission brought suit against the South Carolina Board of Dentistry ("SCBD"), a regulatory body composed largely of practicing dentists, alleging that an SCBD rulemaking had illegally restricted dental hygienists from providing preventive dental care services in schools.⁶ The South Carolina legislature had specifically authorized dental hygienists to perform such services in schools under the general supervision of a dentist, but without need the for a dentist's presence.⁷ SCBD, however, subsequently issued a regulation requiring that dentists pre-examine patients before dental hygienists could perform these types of treatments in school settings.⁸

The FTC's complaint alleged that this regulation violated the antitrust laws by unreasonably restricting the delivery of dental cleanings, sealants, and topical fluoride

In 2007, SCBD entered into a consent agreement with the FTC for a period lasting ten years.¹¹ The consent order required SCBD to publicly announce its support for the state's policy – that hygienists can provide such care in public health settings without a dentist's examination – and requires SCBD to notify the Commission before

Corrections.¹⁸ These statutory provisions are reflected in the Rules of the Georgia Board of Dentistry.¹⁹ Currently, certain dental services, such as sealant and fluoride treatments, can be performed by dental hygienists in these settings without a requirement of either direct or indirect supervision by a dentist.²⁰ For example, the Georgia Oral Health Prevention Program Fluoride Varnish Manual²¹ includes a recommended sample parental consent form that requests parents to “give permission for an examination by a licensed dental professional to determine the need for fluoride varnish and the application of the fluoride varnish if recommended.”²² Both dentists and dental hygienists are licensed in the state of Georgia;²³ this form gives no indication that supervision by a dentist, such as an initial examination, is required before a dental hygienist can apply a fluoride varnish treatment.

The Georgia Board of Dentistry’s Notice, by contrast, includes proposed amendments that will require the indirect supervision of a dentist for dental hygienists performing permitted treatments at approved facilities. The proposed rule defines “indirect supervision as it pertains to procedures delegated to a dental hygienist” to “mean that the licensed dentist is not on the premises but has given either written or oral instructions for the treatment of the patient.”²⁴ This

¹⁸ O.C.G.A. § 43-11-74. Generally, “[d]ental hygienists shall perform their duties only under the direct supervision of a licensed dentist.” *Id.* at § 43-11-74(a). But “[t]he requirement of direct supervision shall not apply to the performance of dental hygiene duties at approved dental facilities of the Department of Community Health, county boards of health, or the Department of Corrections.” *Id.* at § 43-11-74(d). Instead, the Georgia Board of Dentistry “shall provide by rule or regulation . . . for the appropriate degree of supervision by a licensed dentist over dental hygienists performing duties in such facilities.” *Id.*

¹⁹ Generally, “[a] dental hygienist shall perform his or her duties only under the direct supervision of a duly licensed dentist who is licensed to practice in the state of Georgia.” Rules of the Georgia Board of Dentistry Ch. 150-5-.0.3 (3), available at <http://www.sos.ga.gov/acrobat/PLB/Rules/chapt150.pdf>.

“Direct Supervision” means that “a dentist licensed in Georgia is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist and, before dismissal of the patient, examines the patient.” *Id.* at Ch. 150-5-.0.3 (2).

But, “[t]he requirement of direct supervision shall not apply to the performance of dental hygiene duties at approved dental facilities of the Department of Human Resources, county boards of health, or the Department of Corrections.” *Id.* at Ch. 150-5-.0.3 (3)(b).

²⁰ See *id.* See also Georgia Department of Community Health, Division of Public Health, Oral Health, <http://health.state.ga.us/programs/oral/index.asp> (Describing school-linked fluoride supplement programs for high-risk children and dental sealant programs administered by the Department’s Oral Health Unit).

²¹ Georgia Department of Human Resources, Division of Public Health, *Georgia Oral Health Prevention Program Fluoride Varnish Manual: Resources & Information* (Feb. 2008), available at <http://health.state.ga.us/pdfs/familyhealth/oral/fluoridemanual.pdf>

diagnosis of all patients at approved facili

children throughout Georgia, especially young children.”³³ The proposed rule, however, appears likely to reduce, rather than improve, access to such care.

Conclusion

Restricting dental hygienists from performing services that they currently perform without either direct or indirect supervision in covered public health settings will likely raise the cost of these services and ultimately result in fewer persons receiving them. The possible negative effect of these amendments on vulnerable populations is of particular concern. In general, sound competition policy calls for competition to be restricted only when necessary to protect the public from significant harm. Here, we are aware of no evidence of past or future harm from current practices. Therefore, FTC staff urges the Board to reject these proposed amendments absent clear evidence that allowing dental hygienists to perform covered services without direct or indirect supervision in these settings has harmed or will harm patients.

We appreciate your consideration of these issues.

Respectfully submitted,

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Director
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³³ Georgia Public Health Division Fluoride Varnish Manual, *supra* n. 21, at 4-5 (results of 2006-7 Georgia Head Start Oral Health survey provided documentation that demonstrated the need for preventive oral health care for Georgia children, especially young children).