



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

February 2, 1996

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The Honorable **John T. Bragg**  
House of Representatives  
State of Tennessee  
33 Legislative Plaza  
Nashville, TN 37243-0148

Dear Mr. Bragg:

The staff of the Federal Trade Commission<sup>(1)</sup> is pleased to respond to your request for comment on House Bill No. 2542. The bill would make it possible for a veterinarian in Tennessee to be employed by a corporation that is not owned by a licensed veterinarian, as long as the facility is under the direct medical supervision of a licensed veterinarian. Permitting a variety of business formats, subject to appropriate supervision to protect consumers' interests in the quality of care, could lead to efficiencies benefitting consumers. Accordingly, we support this proposal to permit Tennessee veterinarians to adopt different business arrangements.

**I. Interest and Experience of the Federal Trade Commission.**

The Federal Trade Commission is empowered to prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.<sup>(2)</sup> Pursuant to this statutory mandate, the Commission encourages competition in the licensed professions, including the health care professions, and in the delivery of health care services to the maximum extent compatible with other state and federal goals. As one of the two federal agencies with principal responsibility for enforcing antitrust laws, the Commission is particularly interested in restrictions that may adversely affect the competitive process and raise prices (or decrease quality) to consumers. And as an agency charged with a broad responsibility for consumer protection, the Commission is also concerned about acts or practices in the market that injure consumers through unfairness or deception.

**II. Description of H.B. 2542.**

identify the supervising veterinarian to the state board, and must not restrict or interfere with medically appropriate diagnostic or treatment decisions. Finally, H.B. 2542 would repeal outright the ban on transferring a practice or shares in a practice to a non-veterinarian.(8)

### **III. Effects of Prohibiting Jointly Owned or Operated Facilities.**

In licensed and regulated businesses, laws and regulations limiting “commercial practice” have been promoted based on the argument that they are necessary to maintain quality of service and protect the professional’s independent judgment. Among other restrictions, these laws commonly prevent licensed professionals from entering into commercial relationships, including employment, with non-licensed persons or firms. But the effect of such restrictions in licensed businesses is usually to reduce competition and increase prices. That effect should be weighed carefully against effects, if any, on quality of care or service that the restrictions are intended to promote.(9)

Restrictions on the business practices of professionals can reduce competition by preventing the introduction and development of innovative forms of professional practices that may be efficient, provide comparable quality, and offer competitive alternatives to traditional providers. For example, in a case challenging various ethical code provisions that the American Medical Association (AMA) enforced, the Commission found that AMA rules prohibiting physicians 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 as a result, violated federal antitrust laws.(10) The Commission concluded that the AMA’s prohibitions kept physicians from adopting potentially efficient business formats and precluded competition from organizations not directly and completely under the control of physicians. The Commission also found that there were no countervailing procompetitive justifications for these restrictions.(11)

Similar issues were investigated in the Commission’s rulemaking about restraints on commercial eye care practice.(12) Based on the evidence assembled in the rulemaking proceeding, the Commission concluded that restrictions on commercial practices by eye care providers have resulted in significant consumer injury, in the form of monetary losses and less frequent vision care, without providing consumer benefit.(13) The Commission found that a substantial portion of the consumers’ costs for eye examinations and eyewear was attributable to the inefficiencies of an industry protected from competition.(14) The Commission adopted a rule to prohibit state-imposed restrictions on four types of commercial arrangements: affiliating with non-optometrists, locating in commercial settings, operating branch offices, and using nondeceptive trade names. Although the Eyeglasses II rule was vacated on appeal (on the ground that the FTC lacked the statutory authority to make rules declaring state statutes unfair), the FTC’s substantive findings, that the restrictions harmed consumers, were not disturbed.(15) The evidence from the FTC’s rulemaking record remains a persuasive argument for eliminating restraints on commercial practice.(16)

Analogous reasoning might well apply to the veterinary profession. Prohibiting jointly owned or operated facilities could prevent some efficient combinations of business practices or operations that might result in lower prices to consumers. Admitting new business formats that Tennessee’s law now prohibits could have a positive effect on competition and might afford consumers a wider selection of services and costs.(17)

### **IV. Conclusion.**

We encourage the removal of provisions prohibiting veterinarians from working for lay persons or other professionals or entering into partnerships or other associations with them. Restrictions 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.

Sincerely,

**Harold Kirtz**  
Deputy Director



ophthalmic goods, professional associations, federal, state and local government officials, and members of the academic community. See Ophthalmic Practice Rules ("Eyeglasses II"), Statement of Basis and Purpose, 54 Fed. Reg. 10285, 10287 (March 13, 1989) ("Commission Statement").

(13) *Id.* at 10285.

(14) *Id.* at 10285-86.

(15) *California State Bd. of Optometry v. FTC*, 910 F. 2d 976 (D.C. Cir. 1990).

(16) See also R. Bond et al., *The Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry*, FTC Bureau of Economics Staff Report (1980); Deborah Haas-Wilson, *The Regulation of Health Care Professionals Other than Physicians*, *Regulation*, Fall 1992, at 40; and Deborah Haas-Wilson, *Strategic Regulatory Entry Deterrence: An Empirical Test in the Ophthalmic Market*, 8 *J. Health Econ.* 339 (1989) (econometric