



Office of Policy Planning
Bureau of Competition
Bureau of Economics

November 16, 2011

Teneale E. Johnson
Executive Secretary
Board of Dental Examiners
143 State House Station
Augusta, ME 04333

Re: Rules to Implement a 2-Year Pilot Project for Independent Practice Dental Hygienists to Process Dental Radiographs in Underserved Areas of Maine

Dear Ms. Johnson:

The staffs of the Federal Trade Commission’s Office of Policy Planning, Bureau of Competition, and Bureau of Economics¹ appreciate this opportunity to provide comments to the Maine Board of Dental Examiners (“Board”) regarding its proposed rules to implement a legislatively mandated two-year pilot project.² This pilot project would allow licensed independent practice dental hygienists (“IPDHs”) to process dental radiographs (“x-rays”) in underserved areas of Maine. We write to address Section II of the Notice of Agency Rule-making Proposal (“Notice”).³

Section II would restrict IPDHs to independently taking only two types of x-rays: bitewing and periapical films. It would prohibit IPDHs from independently taking other types of x-rays, including panoramic and full-mouth series. The pilot project aims to foster accessible and cost-effective care in underserved areas of Maine, with no stated limitations on the types of x-rays IPDHs may take independently. The proposed restrictions in Section II, however, appear to limit IPDH practice under the pilot project in ways not contemplated by the enabling legislation. We are concerned that Section II, if adopted, would impede the development of new arrangements for delivering oral health care services in ways contrary to the very intent of the pilot project. Notably, the Notice does not provide any statement of the Board’s basis for its proposed restrictions. Nor

The U.S. Surgeon General has found that a “‘a silent epidemic’ of oral diseases” affects our nation’s most vulnerable citizens, such as the underserved communities that the enabling legislation sought to protect.⁴ Dental hygienists play an important role in delivering dental care to these communities.⁵ Therefore, in implementing the pilot project, we urge the Board to avoid imposing what appear to be the unnecessary restrictions of Section II on IPDH practice.

I. Interest and Experience of the FTC

The FTC is charged with enforcing Section 5 of the FTC Act, which prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.⁶ Competition is at the core of America's economy, and vigorous competition

to require a dentist's initial diagnosis of all patients in such settings.¹⁹ Staff expressed concern that the proposed changes likely would raise the cost of such services and reduce the numbers of consumers receiving dental care, with no evidence that additional supervision was needed to prevent harm to dental patients. The Georgia Board has tabled the proposed rules.

II. Background on Maine Legislation and the Proposed Rules

In 2008, Maine passed legislation to allow dental hygienists meeting certain education and experience requirements to be licensed as "independent practice dental hygienists" and to perform many dental care services independently, without supervision by a dentist.²⁰

In June 2011, Maine enacted a legislative "Resolve" directing the Board to implement a two-year pilot project that expands IPDHs' current scope of practice by allowing them also to take x-rays within areas designated as dental health professional shortage areas by the United States Department of Health and Human Services.²¹ The Resolve addresses "radiographs," i.e., x-rays, in general, with no reference to particular types of x-rays. The Resolve directs the Board to develop protocols for IPDHs to take x-rays²² and further directs that it adopt "routine technical rules" to implement the program.²³

The enabling legislation provides that all x-rays taken by IPDHs will be reviewed by a dentist. Specifically, the Resolve requires that an IPDH performing x-rays must have a written agreement with a licensed dentist who will interpret all x-rays within 21 days and sign a radiographic review and findings form.²⁴

Nothing in the Resolve indicates that the legislature contemplated rules that would prohibit IPDHs from providing particular types of x-rays. Section II of the Board's recently proposed rules, however, would alter the pilot project by limiting IPDHs to taking two types of dental x-rays: bitewing films (vertical and/or horizontal) and periapical films (when necessary to check for subgingival calculus removal). The proposed rules would prohibit IPDHs from taking any other types of dental x-rays, including panoramic images or full-mouth series. The proposed rules indicate no reason for these restrictions,²⁵ and in fact seem to undermine the very purpose of the pilot project, which is to test the effects of expanding the current scope of practice of an IPDH.

III. Discussion

Maine's authorization of IPDHs permits the development of an innovative delivery model for promoting oral health care. Licensed IPDHs serve as the initial point of contact for patients seeking dental care, are authorized to provide various preventive services themselves, assess the need for referrals to dentists for additional treatments, and generate written referral plans. Taking dental x-rays would help IPDHs to fulfill their responsibilities in this new delivery model by enhancing IPDHs' ability to detect abnormalities and determine when referrals are warranted. In dental health professional

may be unnecessarily restrictive, and to limit its final rules to those needed to protect the public.

Respectfully submitted,

Susan S. DeSanti, Director
Office of Policy Planning

Richard A. Feinstein, Director
Bureau of Competition

Joseph Farrell, Director
Bureau of Economics

¹ This staff letter expresses the views of the Federal Trade Commission’s Office of Policy Planning, Bureau 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 LD 230, 125th Maine State Legis. (Me. 2011).

³ Board of Dental Examiners, Notice of Agency Rule-making Proposal Concerning Ch. 16: Rules to Implement a 2-Year Pilot Project for Independent Practice Dental Hygienists to Process Dental Radiographs in Underserved Areas of the State (2011), *available at* <http://www.mainedental.org/forms/Chapter16Proposed.pdf>.

⁴ DEPARTMENT OF HEALTH AND HUMAN SERVICES, ORAL HEALTH IN AMERICA: A REPORT OF THE SURGEON GENERAL 1 (2000), *available at* <http://silk.nih.gov/public/hck1ocv.@www.surgeon.fullrpt.pdf>.

⁵ *See generally id.* at 3, 18.

⁶ FTC Act, 15 U.S.C. § 45.

⁷ *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.”).

⁸ *See generally* FTC Staff, Overview of FTC Antitrust Actions in Health Care Services and Products (Sept. 2011), *available at* <http://www.ftc.gov/bc/healthcare/antitrust/hcupdate.pdf>; *see also* FTC, Competition in the Health Care Marketplace: Formal Commission Actions, *available at* <http://www.ftc.gov/bc/healthcare/antitrust/commissionactions.htm>.

⁹ *See, e.g.*, FED. TRADE COMM’N & U.S. DEP’T OF JUSTICE (“DOJ”), IMPROVING HEALTH CARE: A DOSE OF COMPETITION Ch. 7 (2004), *available at* <http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf>.

¹⁰ FTC and staff advocacy may include letters or comments addressing specific policy issues, Commission or staff testimony before legislative or regulatory bodies, amicus briefs, or reports. *E.g.*, FTC and DOJ Written Testimony before the Illinois Task Force on Health Planning Reform Concerning Illinois Certificate of Need Laws (Sept. 2008), *available at* <http://ftc.gov/os/2008/09/V080018illconlaws.pdf>; FTC Ama40 T2.1(200h)-5.8(6 -.00134 .48001 refBT10.02 0 0 1ae Brief(a)-.17(fo)-2-I(fo)-2i.7(clox02 0 0aci16.22Hyd02 0 0 62J11.01

¹⁶ FTC, Advocacy Filings by Subject, Dentistry, *available at* http://ftc.gov/opp/advocacy_subject.shtm#detg.

¹⁷ FTC Staff Comment to the Hon. Timothy G. Burns Concerning Louisiana H.B. 687 (May 1, 2009), *available at*