



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

Office of Policy Planning
Bureau of Competition
Bureau of Economics

May 25, 2012

The Honorable Stephen LaRoque
Representative, North Carolina House of Representatives
Legislative Office Building
300 North Salisbury Street, Room 635
Raleigh, NC 27603-5925

Dear Representative LaRoque

Consumers benefit when health professionals can organize their practices in the way they find most efficient, consistent with quality care. Licensed dentists contract with DSOs to obtain a variety of back office, non-clinical functions, allowing these dentists to focus primarily on the treatment of patients, and less on the business management aspects of running a dental practice. In North Carolina and other states, DSOs appear to help licensed dentists maintain efficient business operations, allowing the dentist to focus more on treating patients.

The proposed legislation states that it is an Act To Require That Dentist Agreements With Management Companies Do Not Shift Control Of Clinical Patient Services Away From /LFHQVHG 'CUCW NWTW Carolina law, however, already prohibits unlicensed persons from performing certain clinical dental procedures as defined in the law, and also prohibits unlicensed persons from owning, managing, sup YLVLQJ FRQWUROOLQJ RU FRO HQWHUSULVH ZKHUHLQ RQH RU PRUH R⁶ WKH >FOLQLFDO@

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IV. LIKELY COMPETITIVE EFFECTS OF H.B. 698

When licensed dentists contract with DSOs to provide nonclinical services to their dental practices, DSOs appear to increase efficiency and support entry by new dental practices, which may lead to lower prices, expanded access to dental services, and greater choice for dental consumers. The proposed Bill likely would prevent dental consumers from receiving the potential benefits of competition.

Moreover, during the course of reviewing or auditing management contracts between dentists and DSOs, the Board would be permitted to collect competitively sensitive information. If the Board chose to disapprove a management contract and there were no proceedings, it is very possible that such competitively sensitive information could be made public. In some circumstances, sharing information among competitors may increase the risk of collusion or coordination on matters such as price or output. If dentists in North Carolina were to gain access to information about their competitors, this too could lead to decreased competition and higher prices in the market for dental services in North Carolina.

V. CONCLUSION

Restrictions on how licensed professionals organize their business practices appear unnecessary to protect consumers, and this general principle appears to apply specifically to the provision of dental services. When licensed dentists choose to use DSOs to manage the clinical, backoffice aspects of their practices, the dentists continue to control the clinical aspects of caring for patients, subject to the existing licensure framework that ensures safe dental practice. Therefore, and not surprisingly, we are unaware of any safety or quality issues arising from the use of DSOs.

Restrictions on the ability of dentists to run their practices by

In-School Dentistry (May 1 & May 22, 2009) available at <http://www.ftc.gov/os/2009/05/V090009louisianahb687amendment.pdf> and <http://www.ftc.gov/os/2009/05/V090009louisianadentistry.pdf>; see generally FTC, Advocacy Filings by Subject, Dentistry, available at http://ftc.gov/opp/advocacy_subject.shtm#detg

¹² See, e.g. Oklahoma State Board of Veterinary Medical Examiners, 113 F.T.C. 138 (Jan. 31, 1990) (consent order against the Oklahoma State Board of Veterinary Medical Examiners for allegedly restricting veterinarians from being partners with, employed by, or otherwise associated with non-veterinarians or veterinarians licensed in other states); R. Bond et al., FTBUREAU OFECONOMICSTAFF REPORT, THE EFFECTS OF RESTRICTIONS ON ADVERTISING AND COMMERCIAL PRACTICE IN THE PROFESSIONS: THE CASE OF OPTOMETRY (1980); STAFF REPORT TO THE FEDERAL TRADE COMMISSION, ADVERTISING OF VETERINARY GOODS AND SERVICES (1978).

¹³ FTC and staff advocacy may comprise letters or comments addressing specific policy issues, Commission or staff testimony before legislative or regulatory bodies, amicus briefs, or reports, e.g. FTC Staff Comment to the Honorable Patricia Todd of the Alabama House of Representatives Concerning Alabama House Bill 156 Allowing Veterinarians to Work as Emplo(,)-2(s)3()-2(C)4(21 MI24(B)ra4i)-1Ea9 Td [(3(s)(7)-5(Td [(3(9)6(7)-5(N1.52 Td [co)-7(m)1

¹⁹ See INSTITUTE OF MEDICINE, REPORT BRIEF, ADVANCING ORAL HEALTH IN AMERICA (April 2011), available at <http://www.iom.edu/~media/Files/Report%20Files/2011/Advancing%20Oral%20Health%20in%20America/Advancing%20Oral%20Health%202011%20Report%20Brief.pdf>.

²⁰ PEW CHILDREN'S DENTAL CAMPAIGN, A COSTLY DESTINATION: ENEMY NO. 1 PEW'S ORAL

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²⁹ H.B. 698 at §9040.2 (c)(2).

³⁰ Id. at §9040.2(d) and (e). For example, §9040.2 (d) V W D W H No. Can. S. Or. W arrangement shall provide for or permit any provision, which alone or in combination with others, (i) has a potential negative impact on patient care, [or] (ii) affects the provision of dental services, the professional decision making dentist, or other personnel of the dentist or professional entity % R W K S U R Y L V L R Q V D U H V R Y D J X H D V W R S U to the Board, dentists, or DSOs. Provisions §9040.2 (e) enumerate 23 items that no management agreement can provide or permit, including, among many others, items related to leasing space, payments to suppliers, and dental practice hours; these provisions are vague and, depending upon interpretation, could undermine the very foundation of DSO agreements with dentists. Moreover, §9040.2 (e) notes that this list is not exhaustive, which leaves the Board extraordinary discretion to prohibit virtually any provision in a DSO contract.

³¹ Id. at §9040.2 (i).

³² Id. at §9040.2 (k).

³³ Id. at §9040.2 (s).

³⁴ Id.

³⁵ Id.

³⁶ Id.

⁴² See Deborah Haas Wilson, Strategic Regulatory Entry Deterrence: An Empirical Test in the Ophthalmic Market
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sensitive business data in one market segment may chill competition in multiple market segments); U.S. DEPT OF JUSTICE & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES §7 (2010), *available at* <http://ftc.gov/os/2010/08/100819hmg.pdf> (describing anticompetitive effects of coordination among rivals, noting by assuaging the fear