

Office of Policy Planning
Bureau of Competition
Bureau of Economics

November 15, 2019

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Chief Executive Of

provide a written standing order authorizing a public health hygienist to provide preventive services without a dentist's comprehensive oral examination.

Thus, although we support the proposed rules, we encourage the Board to consider whether allowing individual dentists to require a prior examination would weaken the proposed rule's potential to increase access to preventive services in shortage areas. We urge the Board to consider whether less restrictive alternatives could address any well-founded patient health and safety concerns.

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 Competition is at the core of America's economy,⁵ and vigorous competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, more choices, and greater innovation. Competition is also essential to ensuring workers a competitive marketplace for their labor.⁶ Because of the importance of health care competition to the economy and consumer welfare, competition in health care markets has long been a key focus of FTC law enforcement,⁷ research,⁸ and advocacy activities.⁹ Many of our recent advocacy comments have

“are often unrelated to competence, education and training, or the safety” of the services they provide.³⁸

Requiring the prior or subsequent examination of a patient by a dentist, regardless of whether that examination is medically necessary, restricts the provision of hygiene services, especially in dental shortage areas.³⁹ Prior examination rules can be a major barrier to the ability of dental hygienists to provide preventive care to children at school. For example, prior examination rules inhibit the use of school-based sealant programs, even though dental hygienists can determine whether to place a sealant based on a visual inspection of a tooth, and sealants are very effective in reducing the risk of decay.⁴⁰

The Federal Trade Commission raised these issues in 2003 when it sued the South Carolina Board of Dentistry, charging that the Board had violated federal law by restricting dental hygienists from providing preventive dental services in schools unless students were first examined by a dentist, thereby restraining competition and depriving thousands of economically disadvantaged schoolchildren of needed dental care.⁴¹ The South Carolina Board of Dentistry ultimately entered into a consent agreement settling the charges.⁴² Under this agreement, the Board agreed to publish notice expressing agreement with an earlier South Carolina legislative amendment. The earlier amendment prohibited the Board from requiring that a dentist conduct an examination as a condition of a dental hygienist performing oral prophylaxis or applying sealants or topical fluoride in a public health setting.⁴³ In addition, the South Carolina Board of Dentistry was required to notify the FTC of any proposed or final rules, regulations, policies, or disciplinary actions relating to the provision of preventive dental services by dental hygienists in a public health setting.

another state, where dentists were allowed to decide whether to reduce the level of supervision of hygienists providing services in dental health resource shortage areas, participation by dentists was very low.⁶⁰

Accordingly, although we support the Board's proposed rules, we encourage the Board to consider the potential effects on competition and access of a system that relies on individual dentists to decide whether to require a prior examination. We also urge the Board to consider less restrictive alternatives that would still address any legitimate and substantiated health and safety

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¹ This letter expresses the views of staff in 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 or of any individual Commissioner. The Commission, however, has authorized us to submit these comments.

² See 34 N.C. Reg. 502 (Sept. 16, 2019).

³ See *id.*

⁴ Federal Trade Commission Act, 15 U.S.C. § 45.

⁵ Standard Oil Co. v. FTC, 340 U.S. 231, 248 (1951) ("The heart of our national economic pol6.9 (on)12at ()-12.1r nno. (ho)-24 (4.2 (

[concerning-proposed-amendments-board-rule-150.5-0.3-governing-supervision-dental-hygienists/101230gaboarddentistryletter.pdf](https://www.ftc.gov/policy/advocacy/advocacy-filings/2017/03/ftc-staff-comment-ohio-state-senate-regarding-competitive).

¹⁴ See Comment from FTC Staff to Peggy Lehner, State Senator, Oh. State Senate (March 3, 2017), <https://www.ftc.gov/policy/advocacy/advocacy-filings/2017/03/ftc-staff-comment-ohio-state-senate-regarding-competitive> (addressing the competitive effects of SB 330, including its provisions on general supervision and licensure of dental therapists); Comment from FTC Staff to the Commission on Dental Accreditation (“CODA”) (Nov. 21, 2014), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-commission-dental-accreditation-concerning-proposed-accreditation-standards-dental/141201codacomment.pdf (urging implementation of accreditation standards for dental therapists); Comment from FTC Staff to CODA (Dec. 2, 2013), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-commission-dental-accreditation-concerning-proposed-accreditation-standards-dental/131204codacomment.pdf (concerning supervision requirements in proposed accreditation standards for dental therapists).

¹⁵ See N.C. GEN. STAT. § 90-221(a).

¹⁶ See N.C. GEN. STAT. § 90-233 (a “dental hygienist may practice only under the supervision of one or more licensed dentists.”); N.C. GEN. STAT. § 90-221(f) (a hygienists’ acts “are deemed under the supervision of a licensed dentist when performed in a locale where a licensed dentist is physically present during the performance of such acts”).

¹⁷ See N.C. GEN. STAT. § 90-233(a1).

¹⁸ See N.C. GEN. STAT. § 90-233(a).

¹⁹ N.C. GEN. STAT. § 90-233(a1). N.C. GEN. STAT.

⁴¹ *See*

⁶⁰ See Comment from FTC Staff to Peggy Lehner, State Senator, Oh. State Senate, *supra* note 14, note 45 and accompanying text (only about 0.4% of Ohio dentists and 1.2% of hygienists obtained permits to participate in a voluntary program to reduce restrictive supervision in certain public health settings).

⁶¹ Although as discussed above, many states allow direct access to dental hygienists who provide services in dental health resource shortage areas, a broad approach applicable to both private and public health hygienists in North Carolina might require changes to the state's dental practice act, be