



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Competition
Bureau of Economics

November 13, 2019

The Hon. Paul J. Donato
Massachusetts State Representative
House of Representatives
24 Beacon Street, Room 481
Boston, Massachusetts 02133

Re: House Bill 1869 / Senate Bill 1329

Dear Representative Donato:

The staffs of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, and Bureau of Economics¹ appreciate this opportunity to respond to your invitation for comments on the likely competitive impact on House Bill 1869 (HB1869) and Senate Bill 1329 (SB1329) (collectively "the legislation"). The legislation would update current Massachusetts statutory language to allow podiatrists to treat not just the foot, but also the ankle, or lower leg.

For reasons explained below, FTC staff support the procompetitive goals of the legislative proposal. Allowing health care professionals to provide additional services that are within the scope of their training should yield procompetitive benefits for Massachusetts's health care consumers, which may include lower costs, shorter wait times for appointments, and increased access to lower leg health care across the state. As the General Court of Massachusetts considers the legislation, we urge legislators to avoid restrictions on podiatrists that are not narrowly tailored to address well-founded patient safety concerns.

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.² Competition is at the core of America's economy and vigorous competition among sellers in an open marketplace provides consumers the benefits of lower prices, higher quality products and services, more choices, and greater innovation.³ Competition is also essential to ensuring workers a competitive marketplace for their labor.⁴

Because of the importance of health care competition to the economy and consumer welfare, competition in health care markets has long been a focus of FTC's law enforcement,⁵ research,⁶ and advocacy⁷ activities. FTC staff have not previously submitted comments specifically addressing podiatrists and their scope of practice; however, based on our extensive study of competitive dynamics in health care services markets, we know that regulatory schemes that permit health care professionals to practice to the full extent of their training can lead to substantial benefits to competition and consumers.⁸

II. Background

Podiatrists (DPMs) and allopathic physicians (MDs) follow similar, but slightly different educational paths.⁹ A podiatrist's education and training typically requires four years of college followed by four years of podiatric medical college.¹⁰ At an accredited podiatric medical college, a student will first need to show competency and demonstrated knowledge of pre-clinical sciences including the human anatomy, physiology, molecular biology, and the biochemical structure and function of the human body and its organ systems.¹¹ Knowledge of diseases, pharmacological principles and interventions, microbes, and the immune system is also required.¹² During clinical training, the podiatry curriculum increasingly specializes and focuses on the lower-extremity anatomy.¹³ This specialization is unlike the clinical training of an MD candidate who continues to study the entire body. Upon graduation from an accredited podiatric medical college, the graduate receives a Doctor of Podiatric Medicine degree.

After receiving a DPM degree, podiatrists enter a postgraduate residency program.¹⁴ Residencies take place in hospitals and provide both medical and surgical experience with a focus on the lower extremities—in particular, the foot, ankle, and their governing and related structures.¹⁵ During their three-year residency training, residents must log a minimum amount of patient care and procedural activities.¹⁶ After residency podiatrists may complete additional training in specific fellowship areas and become board certified.¹⁷

From 2018 to 2028, the number of practicing podiatrists in the United States is projected to grow six percent.¹⁸ Predictions for growth in demand for medical and surgical foot and ankle care stem, at least in part, from the United States' aging population and increases in chronic conditions, such as diabetes and obesity that typically lead to mobility and foot-related problems.¹⁹ Diabetes is a chronic medical condition that affects 30.3 million people in America.²⁰ One prevalent complication of diabetes is diabetic foot ulcers (DFUs), which have been shown to increase a patient's risk of hospitalization, amputation, and death by up to 85 percent.²¹ Studies indicate that treatment by a podiatrist of DFUs can significantly reduce lower extremity amputations and health care costs.²²

The majority of states treat the ankle as part of a podiatry practice. Forty-seven states and the District of Columbia include both the foot and ankle (or lower leg) in their scope of practice for podiatric physicians. In addition, the Department of Veterans Affairs

recently updated responsibilities for the provision of foot and ankle care in ways that reinforce a broader scope of practice for podiatrists. Veterans Health Administration (VHA) facilities now include podiatric medical and surgical services in the medical benefits package.²³ This change permits licensed podiatrists to provide health care services (including surgery) involving the lower leg and foot to all veterans who are enrolled in VHA health care, so long as the provision of such services is consistent with state law. The recently enacted VA MISSION Act of 2018 added podiatrists to the physician pay band.²⁴ This legislation ensures that within the VA system DPMs are paid on the same scale as MD and osteopathic practitioners.

III. Current Massachusetts Law and Regulation Regarding Podiatrists and Proposed Changes

Massachusetts House Bill 1869 and Senate Bill 1329, both titled “An Act Relative to Podiatry,” propose to amend the statutory definition of podiatry. Massachusetts General Law Chapter 112, Section 13(a) currently employs the following definition: “Podiatry as used in this chapter shall mean the diagnosis and the treatment of the structures of the human foot by medical, mechanical, surgical, manipulative and electrical means”²⁵ The legislation would amend the definition of “podiatry” to “mean the diagnosis and treatment, by medical, mechanical, electrical or surgical means, of ailments of the human foot and lower leg.”²⁶

Massachusetts Board of Registration in Podiatry (the Board) regulations already define the practice of podiatry to include treatment of the foot and ankle.²⁷ Thus, the definitions in the statute and regulation are presently inconsistent. Confusion about the permissible scope of practice of podiatry due to such inconsistency may potentially impede podiatrists from practicing to the full extent of their training.

With the proposed legislation, Massachusetts’s statutes and regulations relating to podiatry would more closely mirror each other. This should remove confusion caused by the inconsistency between the statute and regulations, and it should give greater clarity to hospitals, third party and private party payers about the appropriate scope of practice for podiatrists. It should also help patients in Massachusetts better understand what treatments and care are available to them and may avert unnecessary duplicate visits to different professionals and associated fees.

IV. Competitive Considerations Regarding House Bill 1869 and Senate Bill 1329

FTC staff recognize that certain professional scope-of-practice restrictions may be necessary to protect patients. Consistent with patient safety, however, we have urged legislators and regulators to consider whether removing unnecessary practice restrictions may promote competition and benefit health care consumers including patients.²⁸ We respectfully suggest that the Massachusetts legislature consider doing so with respect to the podiatry legislation.

The proposed legislation would allow podiatrists to practice to the full extent of their education, training, and abilities. This change should promote health care competition by expanding the supply of licensed and qualified providers of needed services for treating the lower leg, to the likely benefit of Massachusetts's health care consumers. By allowing podiatrists to practice within the full scope of their training, patients will enjoy a greater supply of qualified health care providers, which likely will lead to more accessible, affordable, safe and effective health care. By expanding the supply of licensed and qualified practitioners, the legislation may help lower prices for Massachusetts health care consumers, including patients themselves as well as both public and private third-party payers. The supply expansion should also increase access to lower-leg health care services, particularly among those in rural and other medically underserved areas that are disproportionately affected by provider shortages. The legislation would also create more consistency between the statute and related Board regulations.

Legislators should carefully consider any purported safety justifications for restricting podiatrists from working within their scope of training.²⁹ In doing so, staff respectfully encourages the legislature to evaluate:

- Whether pertinent evidence exists to maintain the scope-of-practice restriction;
- Whether purposed health and safety justifications are well founded; and
- If there are legitimate safety concerns, whether less restrictive alternatives would protect patients without imposing undue burdens on competition and undue limits on patients' access to health care services.³⁰

Any restrictions on competition that are implemented should be no broader than necessary to address legitimate subjects of regulation, such as patient safety, and narrowly crafted to minimize any potential anticompetitive impacts.

V. Conclusion

Absent evidence of demonstrable health or safety risks associated with a clarification of podiatrists' scope of practice in Massachusetts to include the ankle and

lower leg, FTC staff supports the procompetitive goals of the proposed legislation and recommends that the Massachusetts General Court consider the potential competitive advantages for Massachusetts health care consumers.

Respectfully submitted,



Bilal Sayyed, Director
Office of Policy Planning



Ian Conner, Deputy Director
Bureau of Competition



Bruce H. Kobayashi, 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 Federal Trade Commission Act, 15 U.S.C. § 45.

³ Standard Oil Co. v. Fed. Trade Comm’n, 340 U.S. 231, 248 (1951) (“The heart of our national economic policy long has been faith in the value of competition.”).

⁴ See FED. TRADE COMM’N & U.S. DEPT’ T OF JUSTICE, ANTITRUST GUIDANCE FOR HUMAN RESOURCE PROFESSIONALS (2016), https://www.ftc.gov/system/files/documents/public_statements/992623/ftc-doj_hr_guidance_final_10-20-16.pdf; Chairman Simons’ Responses to Questions for the Record, Senate Judiciary Committee, “Oversight of the Antitrust Laws,” (Oct. 3, 2018), <https://www.judiciary.senate.gov/imo/media/doc/Simons%20Responses%20to%20QFRs.pdf>.

⁵ See FED. TRADE COMM’N, COMPETITION IN THE HEALTH CARE MARKETPLACE, <https://www.ftc.gov/tips-advice/competition-guidance/industry-guidance/health-care>.

⁶ See FED. TRADE COMM’N & U.S. DEP’T OF JUSTICE, IMPROVING HEALTH CARE: A DOSE OF COMPETITION (2004), <https://www.ftc.gov/sites/default/files/documents/reports/improving-health-care-dose-competition-report-federal-trade-commission-and-department-justice/040723healthcarerpt.pdf> [hereinafter FTC & DOJ IMPROVING HEALTH CARE].

⁷ FTC and staff advocacy can include letters or comments addressing specific policy issues, Commission or staff testimony before legislative or regulatory bodies, amicus briefs, or reports. *See generally* Fed. Trade Comm’n, Prepared Statement of the Federal Trade Commission on Competition and Occupational Licensure Before the Judiciary Committee, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, United States House of Representatives, Washington, D.C. (Sept. 12, 2017), <https://www.ftc.gov/public-statements/2017/09/prepared-statement-federal-trade-commission-competition-occupational>. *See also*, Comment from FTC Staff to the Iowa Dep’t of Public Health (Dec. 20, 2016), <https://www.ftc.gov/news-events/press-releases/2016/12/ftc-staff-supports-proposal-flexible-physician-supervision> (regarding the appropriate level of supervision of physician assistants); Comment from FTC Staff to Valencia Seay, Senator, Georgia State Senate (Jan. 29, 2016), <https://www.ftc.gov/policy/advocacy/advocacy-filings/2016/02/ftc-staff-comment-georgia-state-senator-valencia-seay> (regarding removal of direct supervision requirements for dental hygienists); Brief of Amicus Curiae FTC in Support of No Party, In re Nexium (Esomeprazole) Antitrust Litig., No. 15-2005 (1st. Cir. Feb. 12, 2016), <https://www.ftc.gov/policy/advocacy/amicus-briefs/2016/02/re-nexium-esomeprazole-antitrust-litigation> (explaining that a reverse payment from a brand-name drugmaker that is used to settle patent litigation can violate the antitrust laws if it induces a generic drugmaker to abandon its patent challenge and stay out of the market); FTC & DOJ IMPROVING HEALTH CARE, *supra* note 6.

⁸ *See, e.g.*, FED. TRADE COMM’N STAFF, POLICY PERSPECTIVES: COMPETITION AND THE REGULATION OF ADVANCED PRACTICE NURSES (2014), <https://www.ftc.gov/reports/policy-perspectives-competition-regulation-advanced-practice-nurses> [hereinafter FTC STAFF POLICY PERSPECTIVES] (presenting an overview of FTC staff comments regarding APRNs, and an in depth analysis of the competitive effects of statutes and rules governing APRN scope of practice and supervision); FTC Staff Comment to the Department of Veterans Affairs Regarding Proposed Rule on Advanced Practice Registered Nurses (July 25, 2016), <https://www.ftc.gov/policy/advocacy/advocacy-filings/2016/07/ftc-staff-comment-department-veterans-affairs-proposed-rule> [hereinafter Comment from FTC Staff to the Dep’t of Veterans Affairs] (urging that removing the remaining state law-based supervision restrictions for APRNs working within the Veterans Health Administration system could benefit VA patients nationwide); FTC Staff Comment to the Hon. Jesse Topper, Representative, Pennsylvania House of Representatives, Concerning the Competitive Impact of House Bill 100 (Jan. 3, 2018), <https://www.ftc.gov/news-events/press-releases/2018/01/ftc-staff-proposed-pennsylvania-legislation-affecting-nurse> (recommending that allowing full independent practice for certified nurse practitioners after completing three years of collaboration with physicians would benefit competition and health care consumers in Pennsylvania).

⁹ U.S. BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK, PODIATRISTS, HOW TO BECOME A PODIATRIST, (Sept. 4, 2019), <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-4> (“Courses for DPM degree are similar to those for other medical degrees.”).

¹⁰ *Id.* (“Admission to podiatric medicine programs requires at least 3 years of undergraduate education, including specific courses in laboratory sciences such as biology, chemistry, and physics ...”).

¹¹ Council on Podiatric Medical Education, CPME 120, Standards and Requirements for Accrediting Colleges of Podiatric Medicine, Std. 4. Curriculum, Appendix (1), <https://www.cpme.org/files/CPME/CPME%20120%20October%202014.pdf>.

¹² *Id.*

¹³ *Id.*, at Std. 4, Appendix (2, 3).

¹⁴ Council on Podiatric Medical Education, Standards and Requirements for Approval of Podiatric Medicine and Surgery Residencies, Introduction, <https://www.cpme.org/files/CPME%20320%20final%20June%202015.pdf>.

¹⁵ *Id.*, Definition for Podiatric Medicine and Surgery.

¹⁶ *Id.*, at Appendix A: Volume and Diversity Requirements (within volume and diversity requirements residents must log case and procedure activities which include, but are not limited to, 1000 podiatric clinic/office encounters, 300 podiatric surgical cases, 50 trauma cases, 45 other soft tissue foot surgeries, and 40 other osseous foot surgeries.).

¹⁷ Council on Podiatric Medical Education, Joint Committee on the Recognition of Specialty Boards, American Podiatric Medical Association, CPME 220, Criteria and Guidelines for Recognition of a Specialty Board for Podiatric Medical Practice, Policies for Podiatric Medical Certification, <https://www.cpme.org/files/CPME/CPME%20220%20March%202017.pdf>.

¹⁸ U.S. BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK, PODIATRISTS, JOB OUTLOOK, (Sept. 4, 2019), <https://www.bls.gov/ooh/healthcare/podiatrists.htm#tab-6>.

¹⁹ *Id.* See also U.S. DEP'T OF HEALTH AND HUMAN SERVICES, HRSA, HEALTH WORKFORCE PROJECTIONS: CHIROPRACTORS AND PODIATRISTS, 2012-2025 (April 2015) https://bhw.hrsa.gov/sites/default/files/bhw/nchwa/projections/chiropractorspodiatristsapril2015_.pdf

²⁰ U.S. DEP'T OF HEALTH & HUMAN SERVICES, CENTERS FOR DISEASE CONTROL & PREVENTION, NATIONAL DIABETES STATISTICS REP., 1-2 (2017) <https://www.cdc.gov/diabetes/pdfs/data/statistics/national-diabetes-statistics-report.pdf>. (Adults with diabetes have a growing need to contact a foot doctor as they age. U.S. DEP'T OF HEALTH & HUMAN SERVICES, CENTERS FOR DISEASE CONTROL & PREVENTION, , HEALTH CARE UTILIZATION AMONG U.S. ADULTS WITH DIAGNOSED DIABETES, 2013, NCHS Data Brief, No. 183, (Feb. 2015) <https://www.cdc.gov/nchs/products/databriefs/db183.htm> [hereinafter NCHS Data Brief, No. 183].

²¹ Andrew Boulton, et al., *The global burden of diabetic foot disease*, 366 THE LANCET 1719-1724 (2005) <https://www.thelancet.com/journals/lancet/article/PIIS0140673605676982/fulltext>. See also NCHS Data Brief, No. 183, *supra* note 20, at 9 (In 2014, of the hospital discharges related to diabetes, 108,000 were admitted for a lower-extremity amputation (5.0 per 1,000 persons with diabetes)).

²² See Ginger S. Carls, et al., *The Economic Value of Specialized Lower-Extremity Medical Care by Podiatric Physicians in the Treatment of Diabetic Foot Ulcers*, 101 J. AMERICAN PODIATRIC MEDICAL ASSOC. 93, 111 (2011) (patients under the care of a podiatric physician had significantly lower rates of amputation related to diabetic ulceration than did those in a comparison group who did not receive such care) and *id.* at 112-13 (comparing costs for patients who did and did not visit a podiatrist before the foot ulcer diagnosis and finding evidence that patients under the care of a podiatrist had lower costs of \$13,474 lower costs in commercial insurance and \$3,624 lower costs in Medicare plans). See also Frank A. Sloan, et al., *Receipt of Care and Reduction of Lower Extremity Amputations in a Nationally Representative Sample of U.S. Elderly*, 45 HEALTH SERVS. RES. 1740 (2010) (Medicare-eligible patients with diabetes were less likely to experience a lower extremity amputation if a podiatrist was a member of a multidisciplinary patient care team).

²³ Dep't Veterans Affairs, VHA Directive 1122, Podiatric Medical and Surgical Services (Feb. 2, 2018), https://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=5959. The directive included podiatric care services because there is an “increased need for basic foot care as well as care for more complex medical and surgical conditions of the foot.” *Id.* at 2.

²⁴ Pub. L. No. 115-182 § 502, 132 Stat. 1395 (2018) (“VA MISSION Act of 2018”). See also 83 Fed. Reg. 46258, Dep't of Veterans Affairs, Annual Pay Ranges for Physicians, Dentists, and Podiatrists of the Veterans Health Administration (VHA), (Sept. 12, 2018), <https://www.federalregister.gov/documents/2018/09/12/2018-19847/annual-pay-ranges-for-physicians-dentists-and-podiatrists-of-the-veterans-health-administration-vha>.

²⁵ MASS. GEN. LAWS ch. 112, § 13.

²⁶ 2019 Mass. Acts HB 1869; 2019 Mass. Acts SB 1329.

²⁷ See 249 MASS. CODE REGS. § 2.02 “Definitions, Practice of Podiatry means ... maintenance of human podiatric health by the prevention, alleviation or cure of disorders, injuries or disease of the human foot and ankle by medical, mechanical, surgical, manipulative and electrical means”; 249 MASS. CODE REGS. § 4.01 “Role of the Podiatrist In the provision of podiatric care, the podiatrist examines, diagnoses and treats or prescribes course of treatment for patients with disorders, diseases or injuries of the foot and ankle”

²⁸ See, e.g., FTC Staff Comment to the Hon. Susan Reynolds, Iowa Dep’t of Public Health, Concerning Iowa Definition of Physician Supervision of a Physician Ass’t (Dec. 20, 2016), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-professional-licensure-division-iowa-department-public-health-regarding-proposed/v170002_ftc_staff_comment_to_iowa_dept_of_public_health_12-21-16.pdf; FTC Staff Comment to the Hon. Kent Leonhardt, Senator, Senate of West Virginia, Concerning the Competitive Impact of Senate Bill 516 (Feb. 10, 2016), <https://www.ftc.gov/policy/advocacy/advocacy-filings/2016/02/ftc-staff-comment-senate-west-virginia-concerning>; FTC Staff Comment to the Hon. Valencia Seay, Senator, Georgia State Senate, Concerning Competitive Impact of House Bill 684 (Jan. 29, 2016), <https://www.ftc.gov/policy/advocacy/advocacy-filings/2016/02/ftc-staff-comment-georgia-state-senator-valencia-seay>.

²⁹ The FTC is unaware of systematic evidence undermining the safety of podiatric practice or the level of care podiatrists provide their patients.

³⁰ See generally *Barriers to Entrepreneurship: Examining the Anti-Trust Implications of Occupational Licensing: Hearing Before the H. Comm. On Small Bus.*, 113th Cong. 1-3 (July 16, 2014) (statement of Fed. Trade Comm’n on Competition and the Potential Costs and Benefits of Professional Licensure), https://loadtest.ftc.gov/system/files/documents/public_statements/568171/140716professionallicensurehouse.pdf; Comment from FTC Staff to the Hon. Jeanne Kirkton, Representative, Missouri State Representatives, 5 n.11 (Apr. 21, 2015), <https://www.ftc.gov/policy/advocacy/advocacy-filings/2015/04/ftc-staff-comment-representative-jeanne-kirkton-missouri>. See also Comment from FTC Staff to the Dep’t of Veterans Affairs, *supra* note 8, at 6-7.