



# Federal Trade Commission

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COMMISSION AUTHORIZED

October 30, 1992

The Honorable Robert J. Pavlovich  
Montana House of Representatives  
1375 Harrison Avenue  
Butte, Montana 59701

Dear Mr. Pavlovich:

The staff of the Federal Trade Commission<sup>1</sup> is pleased to respond to your request for views on the possible restrictive or anticompetitive aspects of proposed legislation that would amend Montana law concerning denturists, health care professionals who fit, make and repair dentures. This comment deals with the proposal to prevent denturists from entering certain business relationships with dentists. Such a prohibition could deprive consumers of benefits that could result from the ability to choose among competitors offering alternative, potentially more efficient forms of practice.

## 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 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, to the maximum extent compatible with other state and federal goals. For several years, the Commission and its staff have investigated the competitive effects of restrictions on the business practices of state-licensed professionals, such as lawyers, physicians,

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<sup>1</sup> These comments are the views of the staff of the Denver Regional Office of the Federal Trade Commission, and do not necessarily represent the views of the Commission or any individual Commissioner.

<sup>2</sup> 15 U.S.C. § 41 et seq.

dentists, pharmacists, and other non-physician health care providers.<sup>3</sup> In addition, the staff has submitted comments about these issues to state legislatures, administrative agencies, and others.<sup>4</sup> 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 to consumers.

## II. Issues Raised by the Proposed Legislation

The proposed legislation would amend several sections of the Montana law governing denturists.<sup>5</sup> This comment will examine Section 3 of the proposed bill, which addresses business associations between dentists and denturists.<sup>6</sup> A licensed denturist is now permitted to enter "any lawful agreement with a dentist regarding fees, compensation, and business association."<sup>7</sup> A different chapter of the law governs dentistry, and requires a

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<sup>3</sup> See, e.g., *Iowa Chapter of American Physical Therapy Association*, 111 F.T.C. 199 (1988) (consent order); *Massachusetts Board of Registration in Optometry*, 110 F.T.C. 549 (1988); *Preferred Physicians, Inc.*, 110 F.T.C. 157 (1988) (consent order); *Wyoming State Board of Chiropractic Examiners*, 110 F.T.C. 145 (1988) (consent order); *Connecticut Chiropractic Association*, C-3351 (consent order issued November 19, 1991, 56 Fed. Reg. 65,093 (December 13, 1991)); *Medical Staff of Holy Cross Hospital*, C-3345 (consent order issued September 10, 1991, 56 Fed. Reg. 49,184 (September 27, 1991)); *Southbank IPA, Inc.*, C-3355 (consent order issued December 20, 1991, 57 Fed. Reg. 2913 (January 24, 1992)); *Robert Fojo, MD.*, C-3373 (consent order issued March 2, 1992, 57 Fed. Reg. 9258, (March 17, 1992)); *Texas Board of Chiropractic Examiners*, C-3379 (order modified April 21, 1992, 57 Fed. Reg. 20279).

<sup>4</sup> See Comments to South Carolina Legislative Audit Council (February 26, 1992) (Boards of Pharmacy, Medical Examiners, Veterinary Medical Examiners, Nursing, and Chiropractic Examiners); Texas Sunset Advisory Commission (August 14, 1992) (Boards of Optometry, Dentistry, Medicine, Veterinary Medicine, Podiatry, and Pharmacy); see also Statement of David Keniry, Attorney, Boston Regional Office, Federal Trade Commission, before the Committee on Business Legislation, Maine House of Representatives (January 8, 1992) (optometry).

<sup>5</sup> Montana Code Ann., Title 37, Chapter 29 (1991).

<sup>6</sup> This comment will not address the provisions of the bill that assign responsibility for performing particular procedures, or that concern matters with no implications for competition policy, such as programs for dealing with professionals with substance abuse problems.

<sup>7</sup> Montana Code Ann. §37-29-103.

dentistry license in order to act as a manager or proprietor of an establishment where dental services are performed; however, the regulations contained in that chapter do not apply to denturists.<sup>8</sup> The proposed bill would amend the denturistry statute to prohibit a denturist from "practicing dentistry ... by being a manager, proprietor, operator, or conductor of a dental clinic or office." Thus, the bill would apparently prohibit a denturist (who was not also licensed as a dentist) from employing or being a partner of a dentist.

In most parts of this country, dentures have traditionally been obtained through dentists. Dentists examine patients and determine what denture products are needed, then order them from dental laboratories; the laboratories supply them to dentists, who in turn provide them to the patients. Denturists do the same work that is done by dental laboratories; the difference is that denturists deal directly with denture wearers. The relationship between dentists, dental laboratories and denturists has analogies in other health care situations. For example, in eye care, the roles of ophthalmologists or optometrists who examine patients and write prescriptions differ from the role of opticians who make and fit eyeglasses (and, sometimes, contact lenses). In eye care, patients may take their prescriptions to an optician of their choice, so opticians often deal directly with customers, rather than work only through optometrists or ophthalmologists. Analogously in denture care, other countries, notably Canada, and several states, including Montana, now permit denture wearers to deal directly with the denture supplier in some circumstances.<sup>9</sup> In Montana, a prescription for dentures from a dentist is required only in certain situations. Otherwise, consumers deal directly with the denturist without the need for prior involvement of a dentist.

Permitting denturists to deal directly with denture wearers may increase opportunities for consumer choice and make possible potentially more efficient means of delivering services, but may also reduce business for some dentists. There may also be a concern that denturists whose work is not delivered through a dentist might overlook or treat improperly dental care problems

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<sup>8</sup> Montana Code Ann. §37-4-101(2)(b); §37-4-103(4).

<sup>9</sup> Arizona Rev. Stat. §32-1293; Colorado Rev. Stat. §§12-35-111(1)(g), Idaho Code §55-3301 et seq., Maine Rev. Stat. Ann. Title 32 §§1100-B et seq.; Oregon Rev. Stat. §680.500 et seq. Arizona, Maine, and possibly Colorado require a denturist to practice in the office of a dentist. See Arizona Rev. Stat. §32-1294, Colorado Rev. Stat. §12-35-125(3) ("dental auxiliaries"); Maine Rev. Stat. Ann. Title 32 §1100-E(5)(B).

outside the scope of their own specialty.<sup>10</sup> This comment deals only with the legislation's possible effects on the business and competitive relationships between dentists and denturists. It is not intended to address issues pertaining to their relative competence and capability.

### III. Effects of Proposed Legislation

Montana currently allows reciprocal business affiliations between dentists and denturists. The proposed legislation would eliminate the ability to form some of those relationships by prohibiting denturists from employing, or being partners with, a dentist. The proposal would presumably permit employment of a denturist by a dentist, but not allow any type of co-ownership arrangement.<sup>11</sup> The proposal would not affect a denturist's ability to practice independently of a dentist.

Restrictions on business aspects of professional practice, even when well-intentioned, do not always benefit consumers. Many studies have found little relationship between restrictions on professionals' business practices and the quality of care provided.<sup>12</sup> Restrictions on their business practices can limit professionals' ability to compete effectively with each other, and if competition is diminished, consumers may be harmed. Restrictions on their business practices can also increase professionals' costs, and higher costs may be passed on to consumers in the form of higher prices or reduced services. The potential for such adverse effects should be weighed against the intended benefits.

The restriction at issue prevents denturists from employing dentists and prevents dentists from entering into partnerships

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<sup>10</sup> An applicant for a denturistry license must complete specified coursework and pass an examination on such subjects as head and oral anatomy and physiology, oral pathology, and microbiology, as well as denture technology. Mont. Code Ann. §§37-29-303, -305. These requirements are less extensive than the similar requirements for dentists. Mont. Code Ann. §37-4-301.

<sup>11</sup> Although the usual practice for dentists is to send denture work out to dental laboratories, the proposal would not change Montana law which permits a dentist to employ a dental technician to fabricate dentures.

<sup>12</sup> See C. Cox and S. Foster, *The Costs and Benefits of Occupational Regulation*, FTC Bureau of Economics Staff Report, October 1990 (reviewing studies reported in economics literature).

and other co-owner agreements with denturists. Preventing these business relationships may impede the development of multi-service practices that can take advantage of any cost savings from providing a greater range of services. In general, excluding or deterring such combinations and preventing practitioners from operating in potentially more efficient forms may contribute to higher prices to consumers.<sup>13</sup>

Restraints on commercial practices are sometimes defended as means to maintain a high level of professional service quality. But studies of the effects of commercial practice restrictions in many professions, including health care professions, suggest that commercial practice restraints may increase consumer prices without providing quality-related benefits.<sup>14</sup>

The staff of the FTC conducted two comprehensive studies to examine the effects of commercial practice restraints in eye care. The first, conducted with the help of two colleges of optometry and the Director of Optometric Services of the Veterans Administration, and published in 1980 by the FTC's Bureau of Economics, compared the price and quality of optometric goods and services in markets where commercial practices were subject to differing degrees of regulation.<sup>15</sup> The second, published in 1982 by the Bureaus of Consumer Protection and Economics, compared the price and quality of the cosmetic contact lens fitting services

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<sup>13</sup> The Commission has considered the effects of restrictions on associations between professionals and non-professionals, notably in *American Medical Association*, 94 F.T.C. 701 (1979), *aff'd*, 638 F.2d 443 (2d Cir. 1980), *aff'd mem. by an equally divided court*, 455 U.S. 676 (1982). There the Commission examined the AMA rules prohibiting physicians from working on a salaried basis with hospitals or other lay entities (such as HMOs), and from entering into partnerships or similar business arrangements with non-professionals. The Commission concluded that those restrictions unreasonably restrained competition and thereby violated the antitrust laws. It reasoned that the AMA's restrictions kept physicians from adopting more economically efficient business formats and that, in particular, those restrictions precluded competition from organizations not directly and completely under the control of physicians. The Commission also found no countervailing procompetitive justifications for the restraints.

<sup>14</sup> See Cox & Foster, *supra* n. 12.

<sup>15</sup> Bureau of Economics, Federal Trade Commission, *Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry* (1980) ("Bureau of Economics Study").

of commercial optometrists and other provider groups.<sup>16</sup> The studies concluded that restrictions on optometrists' commercial practices raise prices but do not improve the quality of care. The Bureau of Economics Study found that commercial practice restrictions resulted in higher prices for eyeglasses and eye examinations but did not improve the overall quality of care in that market; rather, the study data showed that prices were substantially higher in the markets that barred commercial chain firms. And the Contact Lens Study concluded that, on average, "commercial" optometrists (for example, optometrists who were associated with chain optical firms, used trade names, or practiced in commercial locations) fitted cosmetic contact lenses at least as well as other fitters, but charged significantly lower prices.

These two studies deal specifically with restrictions on optometric practice, not dentistry, and with a wide range of restrictions, not just the limited constraints at issue here. But the principles are likely to apply here just as they have been found to apply in eye care and many other health and non-health professional fields. One study, more directly related to dental care, examined the effects of regulations that limited how dentists could use dental hygienists and assistants and that also limited the number of such dental auxiliaries they could employ.<sup>17</sup> That study found evidence that restricting auxiliaries raised the prices of several dental procedures and the average price of an office visit. The study estimated that the restrictions were imposing losses to consumers and the economy of hundreds of millions of dollars annually.

The effects of the broad prohibition against non-dentists being managers or proprietors of dental offices in Montana may be mitigated to some extent by the existing exemption for denturists. The proposed legislation would eliminate that exemption. By preventing a denturist from being a partner or employer of a licensed dentist in Montana, it would prevent practitioners in these two closely related fields from entering what might be economically efficient forms of collaboration. Such a restriction on business format may prevent the formation and development of forms of professional practice that may be innovative or more efficient, provide comparable or higher quality services, and offer competition to traditional providers.

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<sup>16</sup> Bureaus of Consumer Protection and Economics, Federal Trade Commission, A Comparative Analysis of Cosmetic Lens Fitting by Ophthalmologists, Optometrists, and Opticians (1983) ("Contact Lens Study").

<sup>17</sup> J. Liang and J. Ogur, Restrictions on Dental Auxiliaries, Bureau of Economics Staff Report (May 1987).

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IV. Conclusion

For these reasons, we believe that prohibiting denturists from being partners or employers of dentists could deprive consumers of benefits that could result from the ability to choose among competitors offering alternative, potentially more efficient forms of practice.

Sincerely,

A handwritten signature in cursive script, appearing to read "Claude C. Wild III".

Claude C. Wild III  
Regional Director