



Office of Policy Planning
Bureau of Competition
Bureau of Economics

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

November 15, 2017

The Honorable Kerry Roberts
War Memorial Building, Suite 321
301 6th Avenue North
Nashville, TN 37243

Dear Senator Roberts:

The staffs of the Federal Trade Commission's Office of Policy Planning, Bureau of Economics, and Bureau of Competition appreciate the opportunity to respond to your request for comments on the regulation of the practice of animal massage therapy in Tennessee.¹ As described in your letter,² animal massage therapy is currently statutorily exempted from the definition of the practice of veterinary medicine.³ Absent legislative action, the exemption will expire on July 1, 2018, and the Tennessee Board of Veterinary Medical Examiners may once again determine that the practice of animal massage therapy requires a veterinary license or veterinary supervision.⁴ You have requested FTC staff comments on various legislative options,⁵ as well as other ways Tennessee might "increase the efficiency and competitiveness of the labor market more generally, especially concerning licensure."⁶

We strongly urge the Tennessee legislature to consider making the 2017 exemption permanent, absent evidence of a credible threat of harm that requires either licensing of animal massage therapists, or allowing only veterinarians to perform or supervise the practice of animal massage therapy. Indeed, letting the exemption expire appears inconsistent with current animal health training protocols.

More generally, FTC staff have long encouraged legislatures and regulators to avoid unnecessary occupational regulations that do not address well-evidenced public policy concerns.⁷ We deeply appreciate the role that state legislators and regulators play in determining the optimal balance of policy priorities. When citizens would be at risk of harm from services provided by unqualified professionals, occupational regulation can ensure that professionals maintain minimum competency levels and can be effectively disciplined for misconduct.⁸ Still, licensing erects barriers to entry in a profession, which means it can significantly raise prices for consumers and prevent otherwise qualified individuals from using their skills to earn a living. When professional services involve little risk of harm to public health or safety, states might safely forgo licensing and rely instead on competitive market forces to protect the public from unqualified providers.⁹

As explained in Section III below, FTC staff are generally supportive of state-level efforts to review and, where possible, streamline occupational regulations, consistent with legitimate public policy goals.¹⁰ In our experience, these kinds of reforms can reduce barriers to entry, improve competition, and thereby deliver substantial benefits to a state's consumers. Consistent with that experience, we suggest below a general framework for legislatures considering reforms in this area. In Section IV, we apply this framework to the regulation of animal massage therapy in Tennessee. We conclude that, absent well-founded public policy concerns about the practice of animal massage therapy by people other than (or not directly supervised by) veterinarians, the Tennessee legislature should consider making the 2017 exemption permanent.

I. Interest of the FTC

Competition is a core organizing principle of America's economy.¹¹ It gives consumers the benefits of lower prices, higher quality goods and services, increased access to goods and services, and greater innovation.¹² The FTC works to promote competition through enforcement of the antitrust laws, which prohibit certain transactions and business practices that harm competition and consumers. The FTC also engages in competition advocacy to promote policies that benefit competition and consumers, in the form of comments on proposed legislation and regulations, discussions with regulators, court filings, and other advocacy channels.

The FTC has engaged in various advocacy efforts relating to licensing requirements for occupations and professions over the past several decades,¹³ and has submitted numerous advocacy comments to state and self-regulatory entities.¹⁴ With respect to occupational licensing, FTC advocacies have involved such professionals as real estate brokers,¹⁵ dentists and dental hygienists,¹⁶ nurses,¹⁷ and veterinarians. FTC staff's veterinary advocacies have addressed a proposed prohibition on the practice of animal teeth floating by non-veterinarians¹⁸ and restrictions on veterinarians' ability to advertise and enter business relationships with non-veterinarians.¹⁹

More recently, FTC staff commented on an occupational licensing reform program in Nebraska.²⁰ In addition, the FTC's Economic Liberty Task Force has begun to examine a broad range of licensing issues, and has held roundtables on license portability across state lines and the economic evidence regarding the costs and benefits of occupational licensing.²¹

II. Regulation of Animal Massage in Tennessee

Tennessee's Veterinary Practice Act (the "Act") is intended to "protect the public from being misled by incompetent, unscrupulous and unauthorized practitioners," in the interest of the "health, safety and welfare of the animal population and the citizens of Tennessee."²² The Act defines the practice of veterinary medicine and establishes the Tennessee Board of Veterinary Medical Examiners (the "Board"), which is empowered to "adopt reasonable rules governing the practice of veterinary medicine."²³ Five of the Board's seven members must be licensed veterinarians.²⁴

Under the Act’s definition, the practice of veterinary medicine means to “[d]iagnose, treat, correct, change, alleviate, or prevent animal disease, illness, pain, deformity, defect, injury, or other physical, dental, or mental conditions by any method or mode,”²⁵ and includes “the use of complementary, alternative, and integrative therapies.”²⁶ In 2014, the Board relied on its interpretation of this statutory definition when it enacted a regulation explicitly defining massage therapy as the practice of veterinary medicine.²⁷

In 2016, the Board issued warnings to two lay animal massage therapists that they were in violation of the Act, which could warrant a fine or jail time.²⁸ The Board asserted that animal massage services could be provided only by a licensed veterinarian, or by a layperson employed and supervised by a licensed veterinarian.²⁹

The lay animal massage therapists sued the Board seeking declaratory and injunctive relief.³⁰ The Tennessee legislature subsequently passed a bill in April 2017 temporarily exempting animal massage therapy from the definition of veterinary medicine, which the governor of Tennessee approved in May 2017. The statutory exemption defines animal massage therapy as “the manipulation of the soft tissues of the animal body with the intention of positively affecting the health and well-being of the animal.” Under the exemption, animal massage therapy does not include practices requiring the skill or knowledge of a veterinarian, and as such explicitly “does not include the diagnosis, treatment, correction, alleviation, or prevention of any animal disease, illness, pain, deformity, defect, injury, or other physical or mental condition.”³¹

The exemption gave the Board an opportunity to consider alternative ways to regulate animal massage therapy short of requiring a veterinarian license.³² FTC staff are not aware that the Board has considered any such alternatives as ways to regulate animal massage therapy. Absent further action by the Tennessee legislature, the exemption will expire on July 1, 2018, and the Board again will be authorized to interpret the statutory definition of the practice of veterinary medicine to prohibit the practice of lay animal massage therapy.

III. Competitive Considerations Regarding Occupational Regulation

Occupational licensing laws and regulations require government permission to enter a particular profession, and thereby limit the number of competitors who can provide certain services.³³ Typically, occupational licensing laws specify entry requirements for a profession, define the practices that constitute a licensed occupation, and legally authorize such practices. Without a license, a worker cannot compete to provide services in a given field, regardless of his or her skills and qualifications. Unlicensed practice is prohibited by statute and may be subject to civil or criminal penalties.

In many situations, occupational licensing benefits consumers by ensuring that practitioners meet minimum competency standards. This is particularly true for professions involving health and safety, or in situations where it is difficult for consumers to evaluate quality and competency. Occupational licensing also can benefit professionals by encouraging investment in their career and skill maintenance.³⁴ But where occupational licensing is not justified by well-evidenced public policy concerns, such as protecting consumer health and

safety, licensing may erect unnecessary entry barriers. The resulting restrictions limit competition and consumer access, resulting in potentially higher prices to consumers and reduced incentives to innovate, while failing to provide any countervailing consumer benefits to offset the harm to competition and consumers.

Recent studies of this area have highlighted these potential negative effects of occupational licensing requirements that are not justified by health and safety concerns.

- Limiting the Supply of Professionals: By imposing specific training, certification, or other requirements and fees on potential entrants, occupational licensing excludes those who cannot afford these fees or the cost of completing the additional requirements. These burdens tend to fall disproportionately on the most economically disadvantaged citizens, and on military spouses who regularly move from state to state only to find that their new state has different licensing requirements than their previous state.³⁵ Additionally, in some cases incumbent workers in the profession draft and enforce the licensing requirements. Their interest in limiting competition may conflict with purported consumer-oriented goals.³⁶
- Raising Prices to Consumers: Several studies have found that occupational licensing can blunt competition because it reduces the number of people working in a given field, leading to higher prices or lower quality services.³⁷ This means that consumers may pay higher prices or receive lower quality services, even if they themselves do not work in a field affected by excessive state licensing.
- Limiting Innovation and Entrepreneurship: Occupational regulations that mandate or, alternatively, prohibit a particular way of providing a service may stifle innovation and entrepreneurship.³⁸ Over the long-term, these regulatory barriers to entry may severely impede the flow of labor or services to where they are most in demand, potentially reducing consumer access to valued services.³⁹ As noted in a 2015 report on occupational licensing: “As the labor market changes, licensing rules set down in earlier decades may become an increasingly poor fit for the emerging occupational structure, necessitating continuing review and updates.”⁴⁰

These potential costs of occupational licensing are most troublesome when they are not justified by consumer benefits. Although well-meaning licensing rules may be designed to provide consumers with assurances that certain professionals meet minimum quality standards, some studies have shown that licensing requirements do not always increase service quality,⁴¹ and may include training or educational requirements not relevant to the services a given professional provides.⁴²

For these reasons, FTC staff generally have urged legislators and regulators to consider removing or relaxing excessive licensing restrictions wherever possible, consistent with legitimate health and safety concerns. Reducing the amount of occupational licensing requirements may promote competition, increase the supply of service providers, and benefit consumers. Benefits can include improved access to services, lower prices, and improved service quality. Reform may also spur innovation in how services are delivered.

We respectfully recommend that state legislators, regulators, and other policymakers consider the following framework when evaluating changes to occupational licensing laws and regulations:

- What legitimate policy justifications, if any, were articulated when the license requirements originally were imposed?
- Are there currently any specific, legitimate, and substantiated policy objectives that justify continuing the license requirements?
- If current, legitimate policy objectives are identified, does the furtherance of those objectives likely outweigh the expected harms from licensing? Such harms may include reduced economic opportunities, restricted employment, increases in consumer prices, and reductions in quality or access.
- If state licensing appears justified, are there any less restrictive alternatives to the current licensing system that still would address the legitimate policy objectives, while reducing burdens on entry, competition, and the public? Are the licensing requirements narrowly tailored to achieve the specific public policy purpose, or is there a less intrusive way to achieve the public policy objective?

When the public benefits are slight or highly speculative, occupational licensing may not be desirable in any form, particularly when regulation imposes non-trivial impediments to competition. But, even when well-founded consumer protection or other concerns do exist, the inquiry should not end there. If the restrictions are also likely to harm competition, we respectfully suggest that policymakers consider whether the regulations could be more narrowly tailored to minimize the burden on competition while still achieving other legitimate policy goals. For example, in appropriate circumstances, a state could adopt a certification system in lieu of licensing, which could allow consumers to choose between a certified, but potentially higher-priced professional, and a lower-priced, noncertified professional.⁴³

For these reasons, we recommend that Tennessee maintain only those occupational licensing requirements necessary to address well-founded public health and safety concerns.

IV. Application of the Competitive Framework to the Regulation of Animal Massage in Tennessee

Turning specifically to the regulation of animal massage therapy, FTC staff strongly urge the Tennessee legislature to consider whether the regulation of animal massage therapy is necessary to address well-founded public policy concerns. If not, the legislature should make permanent the current exemption of animal massage therapy from the definition of veterinary medicine.

As the legislature considers the limited body of publicly available evidence regarding the practice of animal massage therapy, FTC staff encourages the legislature to take note of the following observations:

- Legislative Intent: Based on our understanding of the context underlying the existing regulation, it is not clear that the legislature intended the definition of the practice of veterinary medicine to be so broadly interpreted as to capture animal massage therapy.⁴⁴ Indeed, the record of the legislative hearings indicates that some legislators expressed concerns about the definition's broad scope.⁴⁵
- Requiring a Veterinary License to Practice Animal Massage Is Inconsistent with Relevant Training and Certification Protocols in Tennessee: Training in animal massage therapy is not a prerequisite to graduate from the University of Tennessee College of Veterinary Medicine.⁴⁶ Moreover, an animal massage therapy certificate program offered by The University of Tennessee does not require a license to practice veterinary medicine (or concurrent enrollment in veterinary school). Rather, that certificate program is available to veterinary technicians, as well as animal trainers, animal handlers, and others who can legally provide certain animal care services without the supervision of a licensed veterinarian.⁴⁷ This is consistent with the requirements for a national animal massage certification program, which also does not require a veterinary license.⁴⁸ Therefore, returning to a regime that would require a veterinary license (or supervision by a veterinarian) in order to provide animal massage services appears inconsistent with relevant training and certification programs available to Tennessee professionals.
- Lack of Public Policy Concern: We are unaware of any evidence that, prior to regulation, the practice of animal massage therapy raised substantial public policy concerns. As you note in your letter, the Board acknowledged that it never sustained disciplinary actions relating to animal massage therapy or received consumer complaints about lack of regulation of this profession.⁴⁹
- Potential Harm from Regulation: If the exemption is not made permanent, and if the Board once again were to interpret the definition of the practice of veterinary medicine to include animal massage therapy, this action by the Board would create a significant barrier to the provision of animal massage therapy services. It would limit the practice to licensed veterinarians or those employed and supervised by licensed veterinarians, thus excluding specialized lay animal massage therapists who currently provide these services – and who appear to do so safely and effectively, consistent with their training and experience, potentially at a lower price. Moreover, veterinary programs may not even offer instruction on animal massage, which means that veterinarians providing animal massage therapy services (or supervising others providing such services) may be less skilled than specialized lay animal massage therapists.

Likewise, supervision requirements would impose additional costs on lay therapists, which likely would be passed on to consumers in the form of higher prices, as well as giving veterinarians the ability to exclude potential competitors from the market. FTC staff previously have raised concerns with similar supervision requirements, noting that

they can raise concerns of bias and conflict of interest, raise costs, and frustrate efforts at innovation.⁵⁰

- Availability of Less Restrictive Alternative: The 2017 exemption included a compromise that appears less restrictive while still addressing potential policy concerns. While the exemption removed animal massage from the definition of the practice of veterinary medicine, it also explicitly excluded the diagnosis, treatment, correction, alleviation, or prevention of disease or illness from the definition of animal massage therapy.⁵¹

If, after a thorough review of the evidence, the Tennessee legislature determines that some level of regulation is necessary, FTC staff strongly encourage the legislature to clearly identify specific public policy goals and use narrowly tailored regulations to achieve those goals, while imposing the fewest possible restrictions on competition.

V. Conclusion

For the reasons described above, FTC staff urge the Tennessee legislature to carefully consider the procompetitive benefits of maintaining the current exemption of animal massage therapy from the definition of the practice of veterinary medicine. More generally, we encourage the legislature to maintain only the level of occupational regulation necessary to address well-evidenced public policy concerns. As explained above, competition in professional services marketplaces typically benefits consumers, while excessive occupational regulation can leave consumers worse off.

We appreciate this opportunity to present our views.

Respectfully submitted,

Tara Isa Koslov, Acting Director
Office of Policy Planning

Michael G. Vita, Acting Director
Bureau of Economics

Bruce Hoffman, Acting Director
Bureau of Competition

¹ This letter expresses the views of the FTC’s Office of Policy Planning, Bureau of Competition, and Bureau of Economics. The letter does not necessarily represent the views of the FTC or any individual Commissioner. The Commission, however, has voted to authorize staff to submit this comment.

² Letter from Kerry Roberts, Tennessee State Senator, to Tara Isa Koslov, Acting Director, Office of Policy Planning, Fed. Trade Comm’n (Sept. 7, 2017) [hereinafter Request Letter].

³ See TENN. CODE ANN. § 63-12-133(d) (2017) (“For the purposes of this chapter, the practice of veterinary medicine does not include massage therapy to animals, which means the manipulation of the soft tissues of the animal body with the intention of positively affecting the health and well-being of the animal. This therapy does not include the diagnosis, treatment, correction, alleviation, or prevention of any animal disease, illness, pain, deformity, defect, injury, or other physical or mental condition.”).

⁴ See TENN. CODE ANN. §§ 63-12-133(a)(6), (d) (2017).

⁵ According to your letter, you anticipate that the Tennessee legislature will consider at least three options during the legislative session that starts on January 1, 2018: (1) making the current exemption permanent; (2) allowing the exemption to expire so that the practice of animal massage therapy again could be interpreted to constitute the practice of veterinary medicine; or (3) creating a specialty license for animal massage therapy. Request Letter at 1-2.

⁶ See Request Letter at 5.

⁷ Links to many of the FTC’s materials on occupational licensing can be found at <https://www.ftc.gov/policy/advocacy/economic-liberty/selected-advocacy-relating-occupational-licensing>.

⁸ Physicians, for example, require licensure because an unqualified doctor might do great harm to the public.

⁹ For example, in an age of online review sites and message boards, prospective consumers have opportunities to evaluate the quality of service providers and make informed purchasing decisions, often without assistance from the government.

¹⁰ Indeed the competitive effects of occupational regulation are of such importance to the FTC that in March 2017 the agency announced a special Economic Liberty Task Force dedicated to its study. See <https://www.ftc.gov/policy/advocacy/economic-liberty>.

¹¹ See, e.g., N.C. State Bd. of Dental Exam’rs v. FTC, 135 S. Ct. 1101, 1109 (2015) (“Federal antitrust law is a central safeguard for the Nation’s free market structures.”); 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.”).

¹² See, e.g., Nat’l Soc’y of Prof’l Eng’rs v. United States, 435 U.S. 679, 695 (1978) (noting that the antitrust laws reflect “a legislative judgment that ultimately competition will produce not only lower prices, but also better goods and services. . . . The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”).

¹³ See, e.g., FTC STAFF, POLICY PERSPECTIVES: COMPETITION AND THE REGULATION OF ADVANCED PRACTICE NURSES (2014) [hereinafter POLICY PERSPECTIVES], <http://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprpolicypaper.pdf>; CAROLYN COX & SUSAN FOSTER, BUREAU OF ECON., FED. TRADE COMM’N, THE COSTS AND BENEFITS OF OCCUPATIONAL REGULATION (1990), https://www.ftc.gov/system/files/documents/reports/costs-benefits-occupational-regulation/cox_foster_-_occupational_licensing.pdf.

¹⁴ Many of these advocacy comments can be found at <http://www.ftc.gov/policy/advocacy/advocacy-filings>.

¹⁵ FTC and Department of Justice Comment to Governor Jennifer M. Granholm Concerning Michigan H.B. 4416 to Impose Certain Minimum Service Requirements on Real Estate Brokers (2007), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-and-department-justice-comment-governor-jennifer-m.grahholm-concerning-michigan-h.b.4416-impose-certain-minimum-service-requirements-real-estate-brokers/v050021.pdf.

¹⁶ See, e.g., FTC Staff Letter to NC Representative Stephen LaRoque Concerning NC House Bill 698 and the Regulation of Dental Service Organizations and the Business Organization of Dental Practices (2012), http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-letter-nc-representative-stephen-laroque-concerning-nc-house-bill-698-and-regulation/1205ncdental.pdf; FTC Staff Comment Before the Maine Board of Dental Examiners Concerning Proposed Rules to Allow Independent Practice Dental Hygienists to Take X-Rays in Underserved Areas (2011), http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-maine-board-dental-examiners-concerning-proposed-rules-allow-independent-practice/111125mainedental.pdf.

¹⁷ Many of the individual advocacy comments regarding nursing restrictions, along with the research and analyses underlying these comments, are described in POLICY PERSPECTIVES, *supra* note 13.

¹⁸ FTC Staff Comment Before the Texas Board of Veterinary Medical Examiners Concerning Rule 573.17 Regarding Animal Teeth Floating (2010), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-comment-texas-board-veterinary-medical-examiners-concerning-rule-573.17-regarding-animal-teeth-floating/100910texasteethfloating.pdf.

¹⁹ FTC Staff Comment Before the Virginia Board of Veterinary Medicine Concerning Regulations to Remove Restrictions on Advertising and Non-Veterinarian Relationships (1986), http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-virginia-board-veterinary-medicine-concerning-regulations-remove-restrictions/p864641.pdf.

²⁰ FTC Staff Comments to the Nebraska State Senate Regarding a Number of Proposed Senate Bills that Would Loosen or Eliminate Certain Occupational Licensing Requirements in Nebraska (2017), <https://www.ftc.gov/policy/policy-actions/advocacy-filings/2017/03/ftc-staff-comments-nebraska-state-senate-regarding>.

²¹ See generally <https://www.ftc.gov/policy/advocacy/economic-liberty> (includes links to task force events).

²² TENN. CODE ANN. § 62-12-102 (2017).

²³ TENN. CODE ANN. § 63-12-104 (2017); § 63-12-106 (2017).

²⁴ TENN. CODE ANN. § 63-12-104(a), (b) (2017).

²⁵ TENN. CODE ANN. § 63-12-103(10)(A)(i) (2017).

²⁶ TENN. CODE ANN. § 63-12-103(10)(A)(i)(b) (2017).

²⁷ See Tenn. Comp. R. & Regs. 1730-01-.02(2), <http://share.tn.gov/sos/rules/1730/1730-01.20140821.pdf>.

²⁸ The Board warned that the unlicensed practice of veterinary medicine constitutes a Class B misdemeanor in Tennessee, subject to a fine up to \$500 and up to six months in jail for each offense. TENN. CODE ANN. §§ 63-12-119, 40-35-111(e)(2) (2017); see also *Stowe v. Tennessee Bd. of Veterinary Med. Exam'rs*, No. M-232-IV, 16 (Tenn. Ch. Court, Mar. 9, 2017).

²⁹ See *Stowe v. Tennessee Bd. of Veterinary Med. Exam'rs*, No. M-232-IV, 16-17 (Tenn. Ch. Court, Mar. 9, 2017).

³⁰ See *Stowe v. Tennessee Bd. of Veterinary Med. Exam'rs*, No. M-232-IV (Tenn. Ch. Court, Mar. 9, 2017).

³¹ See Senate Bill 849, <http://publications.tnsosfiles.com/acts/110/pub/pc0274.pdf>. The exemption was codified at TENN. CODE ANN. § 62-12-133(d) (2017).

³² See http://tnga.granicus.com/MediaPlayer.php?view_id=354&clip_id=13659, Sen. Roberts, S.B. 849 (April 19, 2017).

³³ See, e.g., George J. Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3, 13 (1971) (“The licensing of occupations is a possible use of the political process to improve the economic circumstances of a group. The license is an effective barrier to entry because occupational practice without the license is a criminal offense.”).

³⁴ See DEPT. OF THE TREASURY, COUNCIL OF ECONOMIC ADVISERS, AND DEPT. OF LABOR, OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS 6, 7 (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.

³⁵ See, e.g., MORRIS M. KLEINER, THE HAMILTON PROJECT, REFORMING OCCUPATIONAL LICENSING POLICIES 6, 13-14 (2015), https://www.brookings.edu/wp-content/uploads/2016/06/THP_KleinerDiscPaper_final.pdf; DICK M. CARPENTER II, PH.D., LISA KNEPPER, ANGELA C. ERICKSON, AND JOHN K. ROSS, LICENSE TO WORK: A NATIONAL STUDY OF BURDENS FROM OCCUPATIONAL LICENSING 6-7, 14 (2012), <http://ij.org/wp-content/uploads/2015/04/licensetowork1.pdf> (one study found that for a subset of low and moderate-income jobs, the average license required around nine months of education and training).

³⁶ The FTC has brought several enforcement actions to challenge incumbent professionals' efforts to limit competition from lower-cost providers through manipulation of occupational regulations. See N.C. State Bd. of Dental Exam'rs, 135 S. Ct. 1101 (2015). See also In re South Carolina State Bd. of Dentistry, Complaint (2003) (Dkt. No. 9311), <https://www.ftc.gov/sites/default/files/documents/cases/2003/09/socodontistcomp.pdf>; In re South Carolina State Bd. of Dentistry, Opinion of the Commission (2004) (Dkt. No. 9311), <https://www.ftc.gov/sites/default/files/documents/cases/2004/07/040728commissionopinion.pdf>.

³⁷ See, e.g., MORRIS M. KLEINER, THE HAMILTON PROJECT, REFORMING OCCUPATIONAL LICENSING POLICIES 6, 15 (2015) (explaining that occupational licensing can result in price increases by as much as 33 percent), https://www.brookings.edu/wp-content/uploads/2016/06/THP_KleinerDiscPaper_final.pdf. Dr. Kleiner estimated the cost to consumers at over \$200 billion dollars annually nationwide. *Id.* (see endnote 3 on page 28 for methodology used to make this calculation).

³⁸ For example, restrictive licensing requirements may affect a professional's ability to telework or to serve customers across state lines, even when otherwise feasible. See DEPT. OF THE TREASURY, COUNCIL OF ECONOMIC ADVISERS, AND DEPT. OF LABOR, OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS 12-13, 28-33 (2015) ("entrepreneurs in new areas that overlap with a licensed occupation – such as someone who is creating a website to enable consumers to take legal action – may find themselves required to hold a license because a small part of their work overlaps with that of another licensed occupation. In this case, the web entrepreneur may be required to hold a law license."), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.

³⁹ See generally POLICY PERSPECTIVES, *supra* note 13, at 2, 20-26.

⁴⁰ See DEPT. OF THE TREASURY, COUNCIL OF ECONOMIC ADVISERS, AND DEPT. OF LABOR, OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS 28 (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.

⁴¹ See, e.g., Morris M. Kleiner & Robert T. Kurdle, *Does Regulation Affect Economic Outcomes: The Case of Dentistry*, 43 J. LAW & ECON. 547, 570 (2000) ("Overall, our results show that licensing does not improve dental health outcomes as measured by our sample of dental recruits. Moreover, treatment quality does not appear to improve significantly on the basis of the reduced cost of malpractice insurance or a lower complaint rate against dentists, where regulation is more stringent."); COX & FOSTER, *supra* note 13, at 21-29.

⁴² For example, in Arkansas, hair braiders were required to attend cosmetology schools that did not even teach hair braiding as a condition of obtaining a license. See Jenni Bergal, *A License to Braid Hair? Critics Say Licensing Rules Have Gone too Far*, STATELINE, PEW CHARITABLE TRUSTS (Jan. 30, 2015), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/1/30/a-license-to-braid-hair-critics-say-state-licensing-rules-have-gone-too-far>. Arkansas ultimately changed its law to deregulate hair braiding. See A.C.A. 17-26-504 (2017).

⁴³ See, e.g., COX & FOSTER, *supra* note 13, at viii-ix. Moreover, less restrictive alternatives, including professional registries, mandatory disclosure requirements, and third party provision of quality information, may achieve many of the same benefits. *Id.* at 49-51.

⁴⁴ As we understand it, the current definition, under which the Board promulgated its animal massage regulation, was enacted in 2010 in response to a legal decision finding that the Board had exceeded its authority by including artificial insemination and pregnancy testing within the scope of the practice of veterinary medicine. See Request

Letter at 2-3; *see also id.* at 3 (a representative from the Tennessee Veterinary Medical Association explained that the bill was intended to focus on pregnancy testing).

⁴⁵ *See* http://tnga.granicus.com/MediaPlayer.php?view_id=77&clip_id=2584&meta_id=41902, Rep. Dennis, House Bill 3491 (Mar. 15, 2010) [hereinafter Legislative Record].

⁴⁶ Licensure as a veterinarian in Tennessee requires completion of a competitive, time consuming, and costly veterinary medicine program, but does not require completion of coursework on animal massage. *See* Tennessee Board of Veterinary Medicine’s Rules 1730-01-.04 & .05 (Qualifications and Procedures for Licensure), <http://publications.tnsosfiles.com/rules/1730/1730-01.20140821.pdf>; TENN. CODE ANN. § 63-12-112 (2017). Similarly, the American Veterinary Medical Association does not require graduates of AVMA-accredited veterinary schools to demonstrate knowledge of, or proficiency in, animal massage. *See generally* About Accreditation, AVMA, <https://www.avma.org/ProfessionalDevelopment/Education/Accreditation/Colleges/Pages/about-accred.aspx>.

⁴⁷ *See* University of Tennessee Certificate Program in Canine Manual Therapy [CCMT], CCMT Course Details, <https://www.utvetce.com/ccmt-details> (veterinary medicine license not a prerequisite for program; course available to veterinary technicians and physical therapists).

⁴⁸ *See* National Board of Certification for Animal Acupressure and Massage National Examination (NBCAAM), http://www.nbcaam.org/images/NBCAAM_Information3.pdf (certification does not require license in veterinary medicine; does require 200 hours of course education to include “at least 50 hours of training in anatomy & physiology, kinesiology (for bodywork) and pathologies...[minimum] 50 hours of supervised in class hands-on work, which would include assessment and execution of bodywork skill being studied, benefits of massage/acupressure, and practice guidelines” and minimum 100 hours of additional coursework on animal behavior, ethics, animal handling, and bio-security).

⁴⁹ Legislative Record, *supra* note 45, at 3-4.

⁵⁰ *See e.g.*, FTC Staff Comment to the Professional Licensure Division of the Iowa Department of Public Health Regarding – In the Proposed New Rules of the Iowa Board of Physician Assistants – the Definition of Physician Supervision of a Physician Assistant (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.

⁵¹ *See* TENN. CODE ANN. § 63-12-133(d) (2017).