

January 31, 2018

Acting Chairman Maureen K. Ohlhausen
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Dear Chairman Ohlhausen,

The Association of Dental Support Organizations (“ADSO”) would like to thank you and the Economic Liberty Task Force (the “Task Force”) for the opportunity to provide comments on the important issue of occupational licensing. The ADSO is a national and international trade association representing Dental Support Organizations (“DSOs”). ADSO membership includes 47 DSOs that support dental practices in 46 states.

DSOs provide non-clinical support functions for dental practices (e.g., accounting, procurement, and scheduling). Our members help lower overhead costs for dentists. These efficiencies are in turn passed onto consumers in the form of greater access to dental care, more choices, and lower prices. DSOs allow dentists to focus on their patients, not on business management functions. The FTC’s recognition of the value that DSOs provide has benefitted consumers and dentists alike. In this regard, the FTC’s state advocacy program has prevented the imposition of burdensome and unnecessary licensing practices that would have made it more difficult for dentists to utilize DSOs.¹

In this comment the ADSO addresses two areas of particular interest to DSOs: (1) licensing requirements for non-clinical dentist work, and (2) portability of licenses to practice dentistry.

Licensing Requirements for Non-Clinical Functions for Dental Practices

The Task Force has raised questions regarding the necessity of licensing obligations in certain occupations.² Specifically, the Task Force asked:

¹ See Letter from FTC Staff to Simone Salloum, Texas State Board of Dental Examiners (Oct. 6, 2014), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-texas-state-board-dental-examiners/141006tsbdecomment1.pdf; Letter from FTC Staff to The Honorable Stephen LaRoque, Representative, North Carolina House of Representatives (May 25, 2012), https://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.

² See, e.g., *Streamlining Licensing Across State Lines: Initiatives to Enhance Occupational License Portability*, FTC (Jul. 27, 2017) (“<https://www.ftc.gov/news-events/events-calendar/2017/07/streamlining-licensing-across-state-lines-initiatives-enhance>”).

Are there some occupations for which it would be better to reduce or eliminate licensing requirements, rather than develop an interstate licensure compact or model law to ease licensing requirements across state lines? What factors would influence this analysis?

The ADSO appreciates the opportunity to comment on this issue because DSO-supported dental practices often face unnecessary licensing obligations that reduce the efficiencies created by the DSO-supported model.

Across the country, the ADSO has fought efforts by some dental licensing boards and state legislators to make it more difficult for licensed dentists to utilize the non-clinical services provided by DSOs. Over the past few years, the ADSO, often with the assistance of the FTC's Office of Policy Planning, has fought against these restrictions in states such as Georgia, Maryland, North Carolina, Texas, Virginia, and Washington.

In their most benign form, state laws related to dentistry ensure the health and safety of patients.³ However, licensing boards, typically comprised of active market participants with potential competitive biases, often move beyond regulating the clinical aspects of dentistry. These proposals purport to be justified by clinical concerns.⁴ For instance, relying on statutes that define the practice of dentistry to encompass those who "own, operate or manage" a dental practice, many boards lobby their state legislatures or propose their own regulations to make it difficult for DSOs to operate.

Sometimes the boards (or the legislatures) effectively delegate their regulatory authority to the dental industry's main trade association, the American Dental Association ("ADA"), by adopting the ADA's code of professional responsibility.⁵ The FTC is the leader in policing the use of industry "ethical" codes where the code contains provisions that unduly restrict competition. The recent spate of legislative and regulatory actions targeted at DSOs and DSO-supported practices is unwarranted and unnecessary: the dental boards (and the states' Attorneys General) have the wherewithal to attack unsafe practices without restricting the efficient non-clinical services provided by DSOs. In letters to state boards and legislators, the FTC has

³ See, e.g., Virginia Code § 54.1-2706 (listing reasons the Virginia Dental Board may refuse to grant a license or suspend or revoke an existing license).

⁴ See *North Carolina State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (Feb. 25, 2015); *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447 (1985); Order Denying Motion to Dismiss on State Action Grounds, *In the Matter of South Carolina Board of Dentistry*, FTC Docket No. 9311 (July 28, 2004).

⁵ See, e.g., Petition, *Adoption of the ADA Code of Ethics*, Virginia Regulatory Town Hall (June 11, 2015), <https://www.townhall.virginia.gov/L/ViewPetition.cfm?petitionid=226>; Board Regulation Number 1, *Code of Ethics*, Mississippi State Board of Dental Examiners, [https://www.dentalboard.ms.gov/msbde/msbde.nsf/webpageedit/Laws_RegsAdopted_req1/\\$FILE/regulation1.pdf?OpenElement](https://www.dentalboard.ms.gov/msbde/msbde.nsf/webpageedit/Laws_RegsAdopted_req1/$FILE/regulation1.pdf?OpenElement). Enforcement by a state dental board of anticompetitive provisions contained in the ADA Code would not likely be pursuant to a clearly articulated state policy, and therefore the state action defense would not be available. Notably, Board adoption of the ADA code may even include future ADA amendments clearly not contemplated the state.

distinguished restrictions on clinical functions from non-clinical functions, the latter of which “are unlikely to affect the quality of professional dental care.”⁶

While some dentists may be most comfortable performing their administrative functions on their own, those dentists should not have the ability to use state licensure requirements to “deny consumers of dental services the benefits of competition spurred by the efficiencies that DSOs can offer, including the potential for lower prices, improved access to care, and greater choice.”⁷

Unwarranted restrictions on DSOs can be extremely harmful to patients in underserved areas. The Kaiser Family Foundation (“KFF”) estimates that 49 million Americans live in “dental health professional shortage areas.”⁸ The KFF reports that “there is a geographic maldistribution of dentists and a shortage of office-based dentists available to treat low-income and special needs populations.”⁹ The Centers for Disease Control and Prevention (“CDC”) estimate that “children from lower-income families are almost twice as likely to have cavities as those from higher-income families, but they are much less likely to have dental sealants[,]” which are safe and effective tools for preventing cavities.¹⁰ The CDC also noted that the prevalence of untreated cavities varies among racial and ethnic groups.¹¹ As the FTC has recognized, DSOs help lower barriers to entry and expand access to these underserved populations.

The ADSO notes that DSO-supported practices are often targeted with regulations that are vague and burdensome. Such regulations make it more difficult for dentists to comply with the law and increase uncertainty associated with the DSO-supported model.¹²

In addition, some states have proposed onerous and unnecessary requirements on DSOs. For example, the FTC commented that North Carolina’s proposal to require DSO-supported dentists to produce contracts with DSOs for review and approval would harm consumers.¹³ More

⁶ Letter from FTC Staff to Simone Salloum, Texas State Board of Dental Examiners, 1 (Oct. 6, 2014). See also Letter from FTC Staff to The Honorable Stephen LaRoque, Representative, North Carolina House of Representatives, 6 (May 25, 2012) (noting that a bill that would regulate DSOs “does not appear [to] enhance the Board [of Dental Examiners’] ability to ensure patient safety.”).

⁷ Letter from FTC Staff to The Honorable Stephen LaRoque, Representative, North Carolina House of Representatives, 1 (May 25, 2012).

⁸ Elizabeth Hinton and Julia Paradise, *Access to Dental Care in Medicaid: Spotlight on Nonelderly Adults*, The Henry J. Kaiser Family Foundation (Mar. 17, 2016), <https://www.kff.org/medicaid/issue-brief/access-to-dental-care-in-medicaid-spotlight-on-nonelderly-adults/>.

⁹ *Id.*

¹⁰ *At a Glance 2016 Oral Health: Working to Improve Oral Health for All Americans*, Centers for Disease Control and Prevention, 2 <https://www.cdc.gov/chronicdisease/pdf/aag-oral-health.pdf>.

¹¹ *Id.*

¹² See, e.g., Letter from FTC Staff to Simone Salloum, Texas State Board of Dental Examiners (Oct. 6, 2014); Letter from FTC Staff to The Honorable Stephen LaRoque, Representative, North Carolina House of Representatives (May 25, 2012).

¹³ See Letter from FTC Staff to The Honorable Stephen LaRoque, Representative, North Carolina House of Representatives (May 25, 2012).

generally, as the FTC is aware, when registration or reporting requirements become particularly burdensome, they can be equivalent to prohibition.

The ADSO supports the Task Force's goal of reducing or eliminating unnecessary occupational licensing requirements.¹⁴ The ADSO appreciates the FTC's past support for DSOs and urges the FTC to continue to monitor the use of occupation licensing requirements that harm competition by limiting the ability of dentists to utilize DSO services.

Portability of Dental Licenses

The Task Force has also requested comments related to occupational licensing portability.¹⁵ The ADSO notes that many states allow dentists with out-of-state licenses to receive licenses by credentials. However, the ADSO also observes that there are substantial state-by-state differences in the procedures for receiving and renewing dental licenses. The ADSO supports the FTC's efforts to find ways to increase the standardization of dental licensure procedures across state lines.

Currently, the state-to-state differences in licensing procedures create substantial burdens for dentists who wish to obtain and maintain licenses in different states. The lack of standardization therefore dissuades many dentists from relocating or expanding practices across state borders to the detriment of consumers. Moreover, ADSO member organizations often incur large administrative costs due to these inconsistent state licensure requirements, which, in turn, may lead to higher costs for consumers. DSOs often perform administrative functions for dentists such as support with renewing licenses. Some DSO-supported practices include dentists with licenses from different states. Each state's license requires a different set of paperwork and procedures. The ADSO believes that standardizing the forms and procedures required for license renewals and applications across state borders would expand access to care and create efficiencies for dentists that utilize DSOs by reducing administrative burden.

Another point worth noting is that states that permit licensure by credentials based on out-of-state licenses may limit the ability of dentists from practicing in multiple states. For example, a North Carolina statute requires dentists seeking a licensure by credentials to "limit the[ir] [] practice to North Carolina."¹⁶ As a result, a dentist who practiced 750 hours a year exclusively

¹⁴ See *Selected Advocacy Relating to Occupational Licensing*, FTC, <https://www.ftc.gov/policy/advocacy/economic-liberty/selected-advocacy-relating-occupational-licensing>.

¹⁵ See *Streamlining Licensing Across State Lines: Initiatives to Enhance Occupational License Portability*, FTC (Jul. 27, 2017), <https://www.ftc.gov/news-events/events-calendar/2017/07/streamlining-licensing-across-state-lines-initiatives-enhance>.

¹⁶ See N.C.G.S. § 90-36(e) ("The holder of a license issued under this section shall establish a practice location and actively practice dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), in North Carolina within one year from the date the license is issued. The license issued under this section shall be void upon a finding by the Board that the licensee fails to limit the licensee's practice to North Carolina or that the licensee no longer actively practices dentistry in North Carolina."). Other states do not have the same restriction. Cf. Laws and regulations regarding licensure by credentials in California (Cal. Bus. & Prof.

in North Carolina would be granted a license, but if that same dentist practiced an additional 750 hours in neighboring South Carolina, the North Carolina license would be revoked. Such a restriction does not serve consumers well, particularly in underserved areas.

Any FTC action that facilitates standardizing licensing procedures across state lines would help ensure that consumers pay for the dental care they receive, not unnecessary back-office administrative functions.

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The ADSO greatly appreciates the opportunity to provide the FTC and Task Force with information on important issues surrounding occupational licensing. The ADSO supports the mission of the Task Force and urges the FTC to continue advocating to reduce unnecessary licensing obligations that harm consumers. Please do not hesitate to contact me at 703-940-3861 or dlaganza@theadso.org with any questions or if the ADSO can assist the FTC's efforts to promote competition.

Sincerely,

Dennis LaGanza
Senior Vice President, Government Affairs
Association of Dental Support Organizations