

**Statement of the Federal Trade Commission
On Commission Vote to Close Investigation of Texas Medical Board’s Conduct**

On June 21, 2017, the Commission voted to close its investigation into whether the Texas Medical Board (“TMB”) violated federal antitrust law by adopting rules restricting the practice of telemedicine and telehealth in Texas. The Commission closed the investigation after Texas enacted a law that establishes a regulatory structure that fosters the growth of competitive and innovative healthcare services for Texas consumers, overriding the TMB’s restrictive rules.

State legislatures are generally free to structure local markets to promote policy goals other than competition.¹ State legislatures may also promulgate laws that promote competitive free markets. Here the Texas telemedicine law passed by the legislature and signed by the Governor is likely to promote competition and expand consumer choice for healthcare services. For example, the law:

- Prevents the TMB and other regulatory agencies from adopting rules that impose a higher standard of care for telemedicine or telehealth services than would be required for in-person services;²
- Overrides current regulations that block telemedicine or telehealth providers from providing healthcare services, by expressly allowing a practitioner-patient relationship to be established through the use of telemedicine or telehealth services;³ and
- Repeals an earlier law that allowed the TMB to adopt rules requiring an in-person consultation within a designated period following an initial telemedicine appointment.⁴

The Commission commends the State of Texas for directly exercising its sovereign authority to override the TMB’s rules and to reform its regulatory authority for the benefit of Texas consumers. As the Commission first noted in a 2004 report, when properly used, telemedicine has considerable promise to broaden access, lower costs, and improve health quality.⁵ The Commission hopes that by expanding the availability of telemedicine and telehealth alternatives, the new law will lead to many benefits for Texans, including increased competition among providers, more innovation in the delivery of care, increased access to healthcare services, reduced travel costs, and greater convenience.

As a general matter, while states may delegate regulatory authority to boards that, like the TMB, are controlled by market participants (e.g., doctors regulating doctors), when such boards exercise their authority in ways that are (1) beyond the scope of state policy and/or supervision;

¹ *Parker v. Brown*, 317 U.S. 341, 351–52 (1943).

² See S.B. No. 1107, 85th Legislative Session, Sec. 3 (Tex. Occ. Code Ann. §§ 111.005(a)(3), (b), 111.007).

³ See *id.* at Sec. 3 (Tex. Occ. Code Ann. § 111.007(b)).

⁴ See *id.* at Sec. 2 (striking Tex. Occ. Code Ann. § 111.004(5)).

⁵ FED. TRADE COMM’N & U.S. DEP’T OF JUSTICE, IMPROVING HEALTH CARE: A DOSE OF COMPETITION 23 (2004).

and (2) contrary to the public interest in competition, they are subject to federal antitrust law.⁶ In such instances, the Commission will intervene to enforce the federal antitrust laws to protect competition. Here, Texas elected officials enacted a law that makes clear that telemedicine and telehealth services should be available to its citizens. This action addressed the Commission's competitive concerns, and consequently, the Commission closed its investigation of the TMB's conduct.

⁶ *N.C. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. ___, 135 S. Ct. 1101, 1114 (2015).