

Congress of the United States
Washington, DC 20515

March 2, 2012

The Honorable Jonathan Leibowitz
Chairman, Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Mr. Chairman,

We are writing to express our concern regarding recent Federal Trade Commission (FTC) actions which we respectfully submit are a direct interference with the state regulation of the practice of medicine and dentistry. Specifically, the FTC's targeting of state legislatures' and state health regulatory boards' decisions, proposed rules, and legislation regarding who may provide certain services to patients are of serious concern.

We strongly object to the FTC substituting its judgment for that of state legislatures and the state health agencies they task with responsibility for, and that have expertise in, patient safety matters. Such regulatory policy decisions have historically been made by state boards, including state boards of medicine and dentistry, based on informed judgments that best serve the health and provider needs of the people of their states. The actions of the FTC not only violate states' rights by infringing on their traditional jurisdiction in these matters but also blatantly ignore the State Action Doctrine that limits the reach of federal antitrust law in deference to state decision making. This threatens to set a chilling precedent for permitting the federal government to dictate scope of practice issues, which are under the jurisdiction of the states for good reason.

The FTC and/or its Office of Policy Planning, Bureau of Economics, and Bureau of Competition have taken a number of actions in direct conflict with the legislatively mandated responsibility of state health regulatory boards to make policy determinations to protect the public. For instance, in Texas the FTC overstepped its role by attempting to make specific suggestions as to the care delivery services that the FTC believed nurse and physician practitioners may or may not offer to Texas patients. There is no doubt that such physician ancillaries and extenders have an important role to play in our healthcare delivery system, but the FTC has neither the jurisdiction nor the expertise to provide comment on what that role may or may not be. In another troubling example, the FTC filed a complaint against the North Carolina State Board of Dental Examiners for their action to bar teeth whitening services by non-dentists. Teeth whitening is clearly articulated as the practice of dentistry pursuant to N.C. GEN. STAT. ANN. § 90-29. In effect, the FTC has, incredibly, taken it upon itself to abrogate a statute adopted by the North Carolina legislature. Similar examples of the FTC overreaching its authority and imposing its lack of expertise in the regulation of the practice of medicine have occurred in Alabama, Florida, and Tennessee.

State health boards, established by state legislatures, are official agencies of the state entrusted to utilize their knowledge of health care and health regulation to ensure the protection of the public. The mission of state boards is unequivocally outside the realm of the FTC's expertise, and the FTC's intervention may very well compromise patient safety. Moreover, the authority of state boards is undeniably not a subject of FTC jurisdiction. If an issue arises with respect to the conduct of a particular state agency it is for the state to address, not the FTC. Without a clear Congressional directive to the contrary, which has not been afforded to the FTC, states through their agencies and

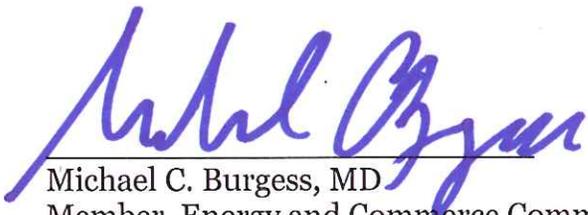
otherwise have the constitutional autonomy to determine the policies that best protect the health and safety of state residents.

Indeed, Congress explicitly limited the jurisdiction of the FTC to natural persons, partnerships, and corporations organized to facilitate business for their own profit or that of their members. State health boards, by their definition, function and purpose, do not fall into any of these categories or conditions, as they are agencies established by, and under the jurisdiction of, their state legislature. State legislatures determine the process by which individuals are appointed and/or selected to serve on state boards. Thus, the ability of state boards to regulate the practice of medicine and dentistry is in accordance with the authority granted by state legislatures, which ultimately retain the right to oversee the policies, actions, and composition of state boards. We believe the FTC has exceeded its authority and with these actions has compromised the integrity and expertise of state established health regulatory boards.

All health care providers are threatened by the FTC's apparent willingness to issue rulings that, if permitted to stand, would overturn state statutes directed to the provision of health care. If the FTC continues actions such as the one in North Carolina to file complaints, in clear violation of state law and state established scope of practice, all health care practitioners could potentially be impacted. We strongly urge you to cease any further intrusion in the state regulation of the practice of medicine or dentistry and withdraw from the actions you have already undertaken.

Should you have any questions regarding this letter do not hesitate to contact James "J.P." Paluskiewicz with Representative Burgess at (202) 225-7772 or James.Paluskiewicz@mail.house.gov.

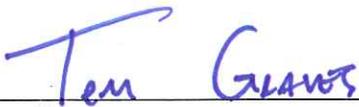
Sincerely,



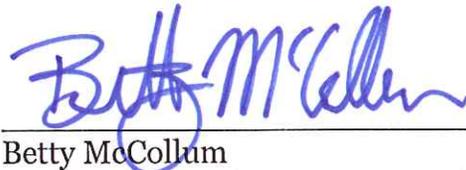
Michael C. Burgess, MD
Member, Energy and Commerce Committee
United States House of Representatives



Jim Matheson
Member, Energy and Commerce Committee
United States House of Representatives



Tom Graves
Member, Committee on Appropriations
United States House of Representatives



Betty McCollum
Member, Committee on Appropriations
United States House of Representatives



Steve Chabot
Member, Committee on the Judiciary
United States House of Representatives