



UNIVERSITY
of HAWAII

MĀNOA
The Honorable Daniel K. Inouye
United States Senate
Suite 722, Hart Senate Office Building
Washington, D.C. 20510-1102

February 4, 2011

Dear Senator Inouye:

We are writing to seek your help in urging the Federal Trade Commission to continue its efforts to end anticompetitive practices within the health market. These current practices lead to significant underutilization of advanced practice nursing professionals.

On October 5, 2010, the Institute of Medicine, in partnership with the Robert Wood Johnson Foundation, released what Donna Shalala PhD, Commission Chair, described as the third in a series of reports on patient safety and the delivery of quality health care in the US. The groundbreaking report entitled *The Future of Nursing, Leading Change Advancing Health*, targeting regulatory barriers, recommended that state and federal policymakers strive to eliminate existing and proposed "scope-of-practice" barriers established through a patchwork of state and federal laws, regulations, and policies that prevent Advance Practice Registered Nurses (APRNs) --including nurse practitioners, nurse anesthetists, nurse midwives, and clinical nurse specialists--from delivering much-needed health care at a level commensurate with their extensive education and training. Within the report, Barbara Safriet, JD provided a roadmap for federal options to maximize the role of APRNs.

On December 15, 2010, the New England Journal of Medicine published an editorial entitled "Broadening the Scope of Nursing Practice." In it, the authors noted FTC reviews of proposed legislation in three states that found what might be considered anticompetitive practices designed to protect professional interest (medical) rather than consumers.

Though APRNs are among our nation's most highly educated and qualified health providers, they face substantial and unnecessary roadblocks to their full participation in health care delivery. For example, their services are impeded by state laws that narrowly define nurses' scope of practice, impose unneeded and burdensome physician supervision and collaboration requirements, and preclude reimbursement for the services of nurses. Although portrayed in terms of protecting the health and safety of the public, many of these laws and policies still exist today primarily to perpetuate the traditional dominance of physicians over other health care professionals.

The FTC Act mandates that the agency prevent unfair methods of competition and unfair or deceptive acts or practices in the marketplace. Competition invigorates the economy and stimulates innovation. The FTC has historically sought to curb anticompetitive conduct within health care and to promote health care competition. The agency often has

successfully encouraged states to eliminate laws that reduce competition among health care providers and professionals without improving patient safety.

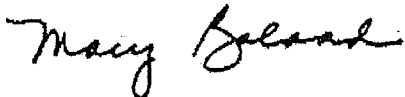
Therefore, we fully support the IOM report's call for the Federal Trade Commission and the Antitrust Division of the Department of Justice to:

Review existing and proposed state regulations concerning advanced practice registered nurses to identify those that have anticompetitive effects without contributing to the health and safety of the public. States with unduly restrictive regulations should be urged to amend them to allow advanced practice registered nurses to provide care to patients in all circumstances in which they are qualified to do so.

One of the most promising avenues to expand the primary care capacity of the health care system is to look beyond our very limited supply of medical doctors to health care professionals who can successfully fill many of the existing and future gaps in care.

The attached legal memorandum summarizes the basis for our involvement. We urge your support to engage the FTC leadership in assuring a robust national health care system free from anticompetitive activities that limit the scope of practice for APRNs.

Sincerely,



Mary G. Boland, DrPH, RN, FAAN
Dean and Professor
School of Nursing & Dental Hygiene



Aviam Soifer, M.US, JD
Dean and Professor
William S. Richardson School of Law

United States Senate
WASHINGTON, DC 20510

April 15, 2011

The Honorable Jon Leibowitz
Chairman
Office of the Chairman
The Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Chairman Leibowitz:


Over the years the Federal Trade Commission (FTC) has reviewed and acted on matters involving anticompetitive behavior and unfair trade practices in the health care field. We have been made aware that the highly regarded Institute of Medicine of the National Academy of Sciences has recently recommended that the FTC review current and proposed state regulations and subsequently urge state governments to take appropriate action to reduce unnecessary barriers limiting the ability of Advance Practice Registered Nurses (APRNs) to provide the range of health services they are trained to provide. The Institute of Medicine's recommendation is especially timely given the rising cost of health care, growing shortages of health professionals in many areas of the country and the important role these health professionals can and should play in providing Americans access to quality, affordable health care.

We are writing to urge your review of this important issue. We would like to share with you a letter received from the Deans of the School of Law and the School of Nursing at the University of Hawaii – Manoa as well as a legal analysis of the issue they have prepared.

Thank you very much for your attention to this important issue.

Sincerely,


DANIEL K. INOUE
United States Senator


JOHN D. ROCKEFELLER IV
United States Senator

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April 15, 2011
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DANIEL K. AKAKA
United States Senator



MARK P. BEGICH
United States Senator



BERNARD SANDERS
United States Senator



MAZIE K. HIRONO
Member of Congress



COLLEEN W. HANABUSA
Member of Congress

Enclosures



THE CHAIRMAN

FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

May 16, 2011

The Honorable Daniel K. Inouye
United States Senate
Washington, DC 20510

Dear Senator Inouye:

Thank you for the letter and enclosures from you and your colleagues in the Senate and the House of Representatives urging the Federal Trade Commission to review the recommendations in the Institute of Medicine's (IOM) recent report, *The Future of Nursing: Leading Change, Advancing Health*. As you point out, the IOM has recommended that the FTC review current and proposed state regulations and, where appropriate, urge the removal of unnecessary scope-of-practice barriers on Advanced Practice Registered Nurses (APRNs). As you also note in your letter, health care competition is critical to the economy and consumer welfare, and protecting American consumers from anticompetitive restraints in the health care sector has long been, and continues to be, one of the Commission's most important responsibilities. As discussed below in more detail, we are pleased to report that addressing unnecessary and anticompetitive scope-of-practice barriers, as the IOM recommends, is and will continue to be, a central part of our ongoing competition advocacy program.

The Commission remains dedicated to protecting consumers. In addition to our wide-ranging law enforcement and research activities in the health care industry,¹ the FTC maintains an active advocacy program designed to urge state legislatures and regulatory boards to remove anticompetitive restraints.² On May 11, 2011, for example, the Commission authorized the Commission staff to submit a letter urging the Texas Legislature to pass legislation that would remove unnecessary physician supervision and delegation requirements imposed on APRNs. The staff comment explained that Texas health care consumers are likely to benefit from such legislation for several reasons,

¹ See generally FED. TR. COMM'N, *FTC ANTITRUST ACTIONS IN HEALTH CARE SERVICES AND PRODUCTS* (Sept. 2010), available at <http://www.ftc.gov/bc/110120hcupdate.pdf>; Fed. Tr. Comm'n Website, *Competition in the Health Care Marketplace*, available at <http://www.ftc.gov/bc/healthcare/antitrust/index.htm>.

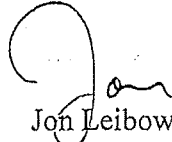
² A complete list of FTC advocacies, including health care as well as non-health care issues, is available at http://www.ftc.gov/opp/advocacy_date.shtm. Advocacy by the Commission and its staff may comprise letters or comments addressing specific policy issues, testimony before legislative or regulatory bodies, amicus briefs, or reports.

including lower health care costs, greater access to care, and more choice among settings where health care is provided. The FTC staff comment cited the recent IOM report.³

The Texas letter is the latest in a series of similar FTC advocacy efforts. Our policy is to respond to requests from state legislators or regulators for FTC staff analysis of proposed regulations and legislation, and there already are several such requests in the advocacy pipeline. The Commission recently authorized the Commission staff to submit letters to several other state regulatory boards and legislatures, urging them to eliminate restrictions or avoid adopting new restraints on the scope of APRNs' practice.⁴ Staff stands ready to submit additional comments concerning APRN scope-of-practice issues in the near future. Staff also maintains an active outreach program to educate interested stakeholders, such as nursing organizations, about our advocacy efforts and our policy of responding to formal invitations for comment. The agency will continue these open communications to help us stay apprised of relevant legislative or regulatory activity, which should generate even more advocacy opportunities.

We appreciate your having brought the IOM report and its recommendations to our attention. Consumer access to quality health care at affordable prices is critically important, and your ongoing vigilance is greatly appreciated. Your letter has been forwarded to the Commissioners and to appropriate members of the Commission staff. Please feel free to contact me with any additional questions or concerns on this or any other topic.

Sincerely,



Jon Leibowitz
Chairman

Enclosure

³ Letter from FTC staff to Hon. Rodney Ellis and Hon. Royce West, Texas State Senate (May 11, 2011) (urging the Texas Legislature to eliminate restrictions on the scope of practice by APRNs that keep APRNs from practicing to the full extent of their training). A copy of this letter is enclosed for your information.

⁴ See, e.g., Letter from FTC Staff to Hon. Daphne Campbell, Florida House of Representatives (Mar. 22, 2011) (regarding proposed legislation to eliminate certain restraints on the scope of practice of Advanced Registered Nurse Practitioners), *available at* <http://www.ftc.gov/os/2011/03/V110004campbell-florida.pdf>; FTC Staff Comment Before the Alabama State Board of Medical Examiners Concerning the Proposed Regulation of Interventional Pain Management Services (Nov. 3, 2010) (regarding restrictions on the scope of practice of certified registered nurse anesthetists, a specialized sub-category of APRNs), *available at* <http://www.ftc.gov/os/2010/11/101109alabamabrdme.pdf>; Letter from FTC Staff to Kentucky Cabinet for Health and Family Services (Jan. 28, 2010) (regarding restrictions on the scope of practice for nurse practitioners, and others, that would have applied in Limited Service Clinics but not in other limited care settings, such as urgent care centers), *available at* <http://www.ftc.gov/os/2010/02/100202kycomment.pdf>.