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BUREAU OF COMPETITION

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

The Honorable Tim Leslie
California Assembly
State Capitol
Sacramento, California 94249-0001

Dear Mr. Leslie:

We are pleased to respond to your request for our views on Assembly Bill No. 1732, now pending before the Health Committee of the California Assembly.* The bill would place certain restrictions on the ability of physicians to dispense prescription drugs to their patients. It would require licensure of dispensing physicians by the Board of Pharmacy and permit physician dispensing only if the dispensing physician's office is located more than 5 miles from a pharmacy, the medication dispensed is no more than a 72-hour supply, and no dispensing fee is charged to the patient. The effect of the bill would be to prohibit physician dispensing in most areas of the state and to eliminate any financial incentive for physicians to dispense in the remainder of the state. We believe that these restrictions are likely to be harmful to consumers.

We do not endorse physician dispensing as preferable to pharmacist dispensing. Rather, we support consumer choice among qualified providers of prescription drugs. Physician dispensing maximizes consumers' options in the purchasing of prescription drugs, and we believe it may increase competition among physicians and between physicians and pharmacists, and lead to lower prices and better services.

* These comments represent the views of the Federal Trade Commission's Bureaus of Competition, Economics, and Consumer Protection, and not necessarily those of the Commission itself. The Commission has, however, voted to authorize the staff to submit to these comments to you. The Commission's staff has been investigating restrictions on competition in the sale of prescription drugs and has examined proposals by some members of the pharmacy profession to have states impose restrictions on physician dispensing.

The dispensing of medication by physicians is a traditional part of medical practice that was once quite common and is currently authorized in all but a very few states. Some consumers may value the option not to have to make a separate trip to a pharmacy to obtain medicine prescribed by their physician. Indeed, the same patient may have different preferences at different times. A parent with a two-year-old child suffering the pain of an ear infection may desire one-stop shopping, whereas the same parent may prefer to get prescription vitamins for the child at a pharmacy. There are increasing numbers of group medical practices and walk-in clinics that are, in response to consumer demand, providing additional options and convenience, and this trend is generating increased competition in the sale of prescription drugs.

California law now allows consumers to choose which provider of pharmaceutical services they prefer and provides safeguards to protect the public health. Under existing law, prescription drugs may be dispensed by physicians only to their own patients; the drugs must be necessary for the treatment of the condition for which the physician is attending the patient; and the drugs may not be furnished to the patient by a nurse or other employee of the physician. Dispensing physicians must also comply with the same labeling, record-keeping, and packaging requirements that are imposed upon pharmacists. Enforcement authority is vested in the Board of Medical Quality Assurance and the Board of Osteopathic Examiners. The existing regulatory scheme appears to be designed to protect public health by ensuring that physicians who dispense meet the health and safety standards applicable to pharmacists, and also to allow patients the benefits of choice among different providers of dispensing services.

Section 1 of the bill sets forth two justifications for the restrictions it would impose. The first is that the pharmacist may prevent the inadvertent misuse of drugs from multiple prescribers and that patient health is placed at risk when the oversight of the pharmacist is circumvented. Pharmacists can provide a check against misuse due to multiple prescribers, provided that patients use only one pharmacist and that the pharmacist maintains complete patient profiles. Even where these conditions are not met, pharmacists may provide other services that are beneficial to consumers, including a review of the prescription for errors, potential drug allergies and interactions, and patient counseling. At the same time, physicians are responsible for their prescribing choices and are, by virtue of their contact with the patient at the time of prescribing and familiarity with the patient's medical history, in an excellent position to consider drug allergies and interactions and provide drug counseling. Moreover, medication errors that occur due to miscommunication between physicians and pharmacists, such as

misinterpretations of prescription orders, would be reduced. Finally, as noted above, California law already requires physicians who dispense to meet the same standards applicable to pharmacists with respect to record-keeping, labeling, packaging, and use of support personnel. In these circumstances, the fact that pharmacists do provide some services that have value to consumers does not mean that consumers should be required to buy those services rather than the services offered by physicians.

The second justification offered in support of the bill is, essentially, that physicians who dispense may be led by their own financial interests to harm patients by overprescribing or prescribing inappropriately. This, of course, is the same issue that arises whenever a physician orders any medical procedure he provides himself, including lab work, diagnostic imaging, or even follow-up visits. The potential conflict of interest raised by physician dispensing seems no different from the potential conflict created when any provider of expert services recommends a product or service and then offers to supply it, such as a stockbroker recommending an investment or a mechanic recommending the replacement of brakes on a car. Indeed, pharmacists face this potential conflict when they recommend vitamins or non-prescription drugs.

In general, we believe that the best way to deal with this sort of problem is to encourage competition, not to restrict it by banning an entire category of transactions that consumers may want. Although there is some incentive to sell additional products or services under such circumstances, competition provides some incentive not to do so because a physician who would exploit patients through improper dispensing risks the loss of his reputation for integrity, and thus the loss of his patients to other physicians. Moreover, exploitive practices are already prohibited by more narrowly focused state laws and regulations. Thus, there is the threat of disciplinary proceedings by the Board of Medical Quality Assurance or the Board of Osteopathic Examiners, state enforcement of safety and health regulations, and state enforcement of statutory prohibitions of fraudulent or unfair acts or practices.

Finally, the provision of the bill that would require physicians who wish to dispense to obtain a license from the Board of Pharmacy may exacerbate the risks to competition inherent in professional self-regulation. There may be incentives for pharmacist-regulators to erect barriers to entry or otherwise to limit competition from physicians who wish to dispense. In addition, although the bill retains the current enforcement authority of the Board of Medical Quality Assurance

and the Board of Osteopathic Examiners, it is not clear whether the Board of Pharmacy could revoke physicians' licenses to dispense for reasons properly within the province of the medical boards.

In sum, dispensing of prescription drugs by physicians increases consumers' ability to choose among qualified providers of pharmaceutical services. The option not to make a separate trip to a pharmacy may be important to some consumers. The resulting competition among physicians, and between physicians and pharmacists, may produce lower prices and improved services. We believe that consumers should not be deprived of these potential benefits unless real evidence demonstrates that physician dispensing has harmed or is likely to harm public health and safety, and that less restrictive safety and health standards, such as those already imposed by law, are insufficient to protect the public. The burden should be on the proponents of the bill to produce such evidence because the bill would eliminate the benefit of consumer choice. In the absence of such evidence, the changes to existing law proposed in the bill appear likely to serve the economic interests of pharmacists and drug stores and to reduce consumer welfare.

Sincerely yours,

Jeffrey I. Zuckerman
Director
Bureau of Competition