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FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

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BUREAU OF
CONSUMER PROTECTION

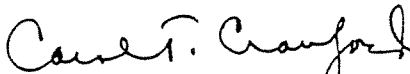
June 28, 1984

The Honorable Art Agnos
California State Assembly
State Capitol
Sacramento, CA 95814

Dear Mr. Agnos:

We learned Monday that Assembly Bill 3504 has been defeated. Nevertheless, pursuant to your request, we are sending the enclosed comments with the understanding that they may be relevant should a related bill be considered in the future.

Sincerely,


Carol T. Crawford
Director

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WASHINGTON, D. C. 20580

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CONSUMER PROTECTION

The Honorable Art Agnos
California State Assembly
State Capitol
Sacramento, CA 95814

Dear Mr. Agnos:

The Federal Trade Commission's Bureaus of Consumer Protection, Economics, and Competition¹ are pleased to respond to your request for comments on Assembly Bill 3504, which would repeal existing restrictions on the number of branch offices that an optometrist or group of optometrists practicing in California may permissibly operate.²

The Federal Trade Commission seeks to promote the national policy of encouraging competition among members of licensed professions to the maximum extent compatible with other legitimate state and federal goals. For several years, the Commission has been investigating the effects of state-imposed restrictions on the business practices of professionals, including optometrists, dentists, lawyers and physicians. Our goal is to identify and encourage the removal of restrictions that impede competition and increase costs to consumers without providing countervailing benefits. In offering these comments, we acknowledge that we are not in a position to offer advice on what minimum level of quality of care the states should require.

Section 3077(f) of the California Business and Professions Code currently provides that no optometrist or group of optometrists may operate more than one branch office.³ Section 3077(i) does permit an individual optometrist to operate more than one branch office but only if he is in personal attendance at each of his offices at least fifty percent of the time that

¹ These comments represent the views of the Bureaus of Consumer Protection, Economics and Competition of the Federal Trade Commission and do not necessarily represent the views of the Federal Trade Commission or any individual Commissioner. However, the Federal Trade Commission has reviewed these comments and has voted to authorize their presentation.

² Assembly Bill 3504 also has provisions dealing with issues other than branch office limitations on optometrists. Our comments are limited to the branch office issue.

³ Cal. Bus. & Prof. Code § 3077(f) (Deering 1975).

the office is open.⁴ Assembly Bill 3504 would amend those two statutory subsections to provide that any optometrist or group of optometrists may operate more than one branch office so long as a currently licensed optometrist is in attendance at each branch office at all times that the office is open for the practice of optometry.

Restrictions on the number of offices an optometrist may operate are an example of what are often termed "commercial practice" restrictions. Commercial practice restrictions -- other examples of which are prohibitions on employer-employee or other relationships between optometrists and non-optometrists, limitations on where an optometrist may locate his or her office, and bans on the use of trade names -- prevent "commercial" or "chain store" optometry. Proponents of these restrictions claim that they are necessary to maintain a high level of quality in the optometric services market. They assert that large chain retailers tend to be less concerned with the quality of professional care than optometrists practicing in more traditional settings. Allegedly, while these firms might offer lower prices, they might also encourage their optometrists to cut corners in order to maintain profits. Finally, proponents of commercial practice restrictions argue that the public would suffer doubly because professionals who practice in traditional, non-commercial settings would be forced to lower the price and quality of their services in order to compete.

Those who favor the relaxation of restrictions on the commercial practice of optometry, including restrictions on the number of branch offices an optometrist may operate, believe that the actual effect of such restrictions is to reduce competition among optometrists and raise the cost of optometric services to consumers. An optometric firm with multiple branch offices can more efficiently use mass media advertising to attract a large volume of patients. This increased volume may enable the firm to realize certain production economies (such as more efficient utilization of its employees and equipment) unavailable to traditional practitioners. This is particularly true the more standardized the services tend to be. High-volume firms may also be able to obtain legitimate quantity discounts on purchases of ophthalmic materials and supplies. The net result is lower prices and increased availability of services to consumers.

The Federal Trade Commission's Bureaus of Economics and Consumer Protection have performed two studies that provide evidence that limits on branch offices and other restrictions on commercial optometric practice are harmful to consumers. The

⁴ Cal. Bus. & Prof. Code 3077(i) (Deering 1975).

first study,⁵ conducted with the help of two colleges of optometry and the chief optometrist of the Veterans Administration, compared the price and quality of eye examinations and eyeglasses in cities displaying a variety of different legal environments. Cities were classified as markets where advertising was present if there was advertising of eyeglasses and eye exams in local newspapers or "Yellow Pages." Cities were classified as markets with chain optometric practice if eye exams were available from large optical firms. Since restrictions on branch offices necessarily restrict the operation of chain optometric firms, the study provides important information about the likely effects of such restrictions.

The study found that prices for eye examinations and eyeglasses were significantly higher in cities without advertising and chain firms than in cities where advertising and chain firms were present. The average price charged by optometrists in the cities without advertising and chain firms was 33.6% higher than in the cities with advertising and chain firms (\$94.46 versus \$70.72). Of the 33.6% average price discrepancy, 17.9% was attributed to the absence of chain firms, the remaining difference being attributed to the absence of advertising.

The data also showed that there was no reduction in the quality of care in cities where chain practice and advertising were present. The thoroughness of eye examinations, the accuracy of eyeglass prescriptions, the accuracy and workmanship of eyeglasses, and the extent of unnecessary prescribing were, on average, the same in both cities with and without advertising and chain practice.

The second study compared the cost and quality of cosmetic contact lens fitting by various types of eye care professionals.⁶ This study was designed and conducted with the assistance of the major national professional associations representing ophthalmologists, optometrists and opticians. Its findings are based on examinations and interviews of more than 500 contact lens wearers in 18 urban areas. The study showed that, on average, "commercial" optometrists -- that is, optometrists who worked for a chain firm or advertised heavily -- fit contact lenses at least as well as ophthalmologists, opticians, and other optometrists, but charged significantly lower prices.

⁵ Bureau of Economics, Federal Trade Commission, Staff Report on Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry (1980).

⁶ Bureaus of Consumer Protection and Economics, Federal Trade Commission, A Comparative Analysis of Cosmetic Contact Lens Fitting by Ophthalmologists, Optometrists, and Opticians (1983).