

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

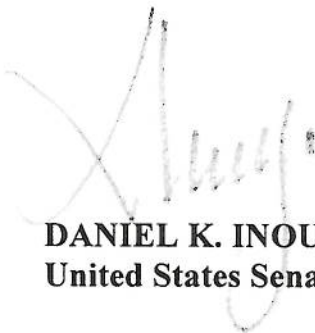
Dear Chairman Leibowitz:

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

The Honorable Jon Leibowitz
April 15, 2011
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DANIEL K. AKAKA
United States Senator



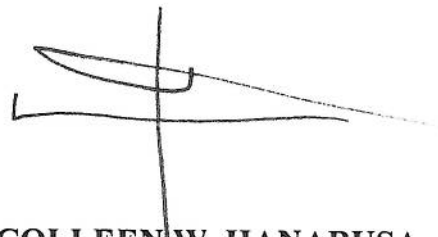
MARK P. BEGICH
United States Senator



BERNARD SANDERS
United States Senator



MAZIE K. HIRONO
Member of Congress



COLLEEN W. HANABUSA
Member of Congress

Enclosures



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.

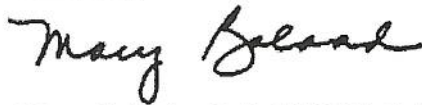
Therefore, we fully support the IOM report's call for the Federal Trade Commission and the Antitrust Division of the Department of Justice to:

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