



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

9/21

Honorable James T. Broyhill  
House of Representatives  
Washington, D. C. 20515

Dear Jim:

The President has asked me to respond to your letter of September 16, 1982, requesting the Administration's position on your amendment to H.R. 6995, the Federal Trade Commission Authorization Act of 1982.

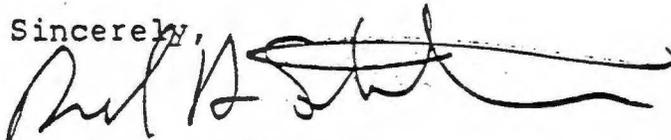
Our understanding is that your amendment would substantially restrict the FTC's jurisdiction over certain state-licensed professionals, while preserving FTC authority over anticompetitive agreements among professionals. In particular, the amendment prohibits the FTC from using its authority under Sections 5 or 18 of the Federal Trade Commission Act to prohibit unfair acts or practices engaged in by professionals in a particular state, if this will result in the invalidation, in whole or in part, of any law of the state establishing training, education, or experience requirements for the licensure of professionals, or the tasks or duties which may be performed by professionals. This prohibition will not apply if the Commission finds that the law in question authorizes or prescribes commercial or business acts or practices and adversely affects or is likely to adversely affect competition. A Commission finding in this regard will have to take into account the benefits to public health, safety, and welfare of the state law in question. In addition, the FTC will be prohibited from finding a method of competition to be unfair under its antitrust authority where the method of competition is prescribed by a state according to the State Action Doctrine.

The Administration supports this compromise amendment. We believe it strikes a reasonable balance between total elimination of FTC jurisdiction over business practices of professionals--even practices found to be deceptive or anticompetitive--and current law, which contains no restrictions on the FTC's authority regarding the professions.

Your compromise would be consistent with the Administration's policies of assuring vigorous market competition while eliminating Federal intrusion into matters best reserved to the states.

The Administration appreciates the opportunity to comment on your amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Stockman", written over a horizontal line.

David A. Stockman  
Director

cc: Hon. Thomas P. O'Neill  
Hon. James J. Florio  
Hon. John D. Dingell  
Hon. Norman F. Lent

FTC/AMA Issue

March 31

Stockman letter to Florio; supports Jim Miller's position; "Admin would not support proposals... to grant blanket immunity to the professions from the Commission's antitrust & consumer protection jurisdiction."

Shortly after, doctors met with JAB & JC to complain about Stockman letter, especially last phrase that said "we see no reason to exempt... any particular group" provided the FTC's overall authority is appropriately narrowed.

OMB then tried to work out compromise that gave doctors some exemption, but not from anti-competitive practices such as price-fixing, boycotts, etc. Miller was reluctantly persuaded but doctors refused to go along. They felt they could run over us, and did so in committee.

May 11

Statement of Admin Policy sent to Hill on the bill; it supported the compromise re FTC jurisdiction over professions.

Sept 17

OMB sent official word thru whip organization that Admin supports Broyhill compromise. This is essentially the same as our earlier version, though in a separate bill. Due to the controversy on the issue of FTC jurisdiction over professionals, the general, non-controversial parts of the FTC reauthorization were put in a separate bill.

Versions competing now are Luken-Lee (total exemption) and Broyhill-Lent (partial exemption). Today we will send a letter to Michel and Broyhill restating our support for only a partial exemption.

NOTE-- in our meeting with the doctors, they really asked only that we not take a position (as Stockman's letter did) between Miller (no exemption at all) and the AMA (total exemption). You talked with Stockman and asked if we could water his letter down. He said we were too committed, but we'd try to get Miller to compromise. We succeeded, but the AMA wouldn't buy it. I spoke with you, then told Spencer we could not support a total exemption.



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David A. Stockman  
Director

cc: Hon. Thomas P. O'Neill  
Hon. James J. Florio  
Hon. John D. Dingell  
Hon. Norman F. Lent

DATE: 9/21

TO:	ACTION	FYI
Dave Stockman	<input type="checkbox"/>	<input type="checkbox"/>
Joe Wright	<input type="checkbox"/>	<input type="checkbox"/>
Don Moran	<input type="checkbox"/>	<input type="checkbox"/>
Larry Kudlow	<input type="checkbox"/>	<input type="checkbox"/>
Fred Khedouri	<input type="checkbox"/>	<input type="checkbox"/>
Annelise Anderson	<input type="checkbox"/>	<input type="checkbox"/>
Ken Clarkson	<input type="checkbox"/>	<input type="checkbox"/>
Al Keel	<input type="checkbox"/>	<input type="checkbox"/>
Chris DeMuth	<input type="checkbox"/>	<input type="checkbox"/>
Hal Steinberg	<input type="checkbox"/>	<input type="checkbox"/>
Mike Horowitz	<input type="checkbox"/>	<input type="checkbox"/>
Don Sowle	<input type="checkbox"/>	<input type="checkbox"/>
Legislative Affairs	<input type="checkbox"/>	<input type="checkbox"/>
Ed Dale	<input type="checkbox"/>	<input type="checkbox"/>
Pete Modlin	<input type="checkbox"/>	<input type="checkbox"/>
Candy Bryant	<input type="checkbox"/>	<input type="checkbox"/>
Jim Frey	<input type="checkbox"/>	<input type="checkbox"/>
Dick Darman (for WH Staffing)	<input type="checkbox"/>	<input type="checkbox"/>
<u>Jim Cicconi</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

*The attached 2 items  
were red-tagged to you -*

- note Director's decision/comments
- we should discuss this
- no action necessary
- please edit and return by \_\_\_\_\_
- project log - lead to \_\_\_\_\_
- store in book \_\_\_\_\_

per our conversation - this letter went → Hill this am.

FROM: DAVID GERSON (X3060)



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON D.C. 20503

MAY 11 1977

OFFICE OF  
THE DIRECTOR

NOTE FOR: DICK DARMAN  
KEN CRIBB  
JIM CIGSONI ✓

FROM: Don Moran

F.Y.I.

A handwritten signature in black ink, appearing to be "DM", with a long horizontal line extending to the right.



# STATEMENT OF ADMINISTRATION POLICY

ON: S. 2499 (Kasten FTC Reauthorization)

The Administration supports reauthorization of the Federal Trade Commission at the levels provided in S. 2499.

In addition, the Administration supports the bill's provisions defining "unfairness" within the meaning of the Federal Trade Commission Act. The bill could be improved, however, by the addition of Chairman Miller's proposed definition of "deception" within the meaning of the Act, and the Administration supports amendments to add this language.

The bill contains language providing for a moratorium on certain Federal Trade Commission enforcement and rulemaking actions affecting certain classes of professionals and professional organizations. We understand an amendment may be offered to substitute a total exemption from FTC authority for the professions. The Administration would support a compromise provision that would (a) broaden the scope of the moratorium provisions to preclude FTC enforcement and rulemaking actions in all matters except price fixing, group boycotts, and similar restraints of trade, but would (b) limit the duration of the moratorium to two years and require a study of the appropriate role of Commission regulation with respect to State-licensed professions.

THE WHITE HOUSE  
WASHINGTON

May 12, 1982

TO: JAB III

RE: FTC Exemption for Professions

As you know, the AMA rolled us in the committee vote, 10-5 in favor of a blanket exemption.

Though Jim Miller has opposed any form of exemption, he was sufficiently shocked by the committee vote that he will probably now support our moratorium proposal (which was transmitted to the Hill as the Administration's official position, Miller notwithstanding).

The moratorium would, as you know, prevent any FTC action against state-regulated professions for 2 years, pending a study, except for antitrust violations such as price-fixing and boycotts.

The moratorium is a better position for us because it only allows the AMA to argue that they should be exempt from antitrust action. From a political standpoint, it is clearly less harsh to them than Dave Stockman's earlier position. Thus, even if we lose, we should not make too many enemies. Legislatively, we may decide to concede the Senate and concentrate on the House committee to modify the total

Memo to JAB III  
May 12, 1982  
Page Two

exemption clause.

By the way, I had the unpleasant experience of having Stu Spencer call me to gloat over their having won the committee vote. They are flushed with victory, and wanted you to know that they intend to fight this all the way without compromise.

Their idea is both bad law and bad policy, though, and I still hope we can quietly get some modifications while avoiding hard feelings. If you want more info, let me know.

By the way, I understand Stu still has some sort of consulting relationship with the White House. If so, doesn't his lobbying on such issues present a problem? (special access, etc.)

JC

THE WHITE HOUSE  
WASHINGTON

Stu Spencer

714/979-7151(0)

Spencer: we're going all  
the way w/ this.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

*Jc*

May 7, 1982

MEMORANDUM FOR JIM BAKER

FROM: Dave Stockman   
SUBJECT: FTC Reauthorization

I have given Gary Lee a copy of the attached language as a suggested compromise to the professional exemption controversy. This language would place a two-year moratorium on FTC jurisdiction over State-licensed professions except price fixing, boycotts, similar hard-core restraints of trade, and suppression of truthful advertising. It would require an FTC/Justice study of the broader issues to be delivered to Congress nine months before the moratorium was over.

This approach goes further than Jim Miller's position but not as far as the McClure/AMA proposal for total exemption. I think it's a good compromise.

Attachment

cc: Bob Thompson  
Don Moran  
J. L. Cullen

97th CONGRESS

1st SESSION H.R. \_\_\_\_\_

To place a moratorium on certain activities of the  
Federal Trade Commission with respect to professionals  
and professional associations.

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IN THE HOUSE OF REPRESENTATIVES  
MAY \_\_, 1982

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A BILL

To place a moratorium on certain activities of the  
Federal Trade Commission with respect to  
professions and professional associations.

Be it enacted by the Senate and House of Representa-  
tives of the United States of America in Congress  
assembled, That:

(A) The Federal Trade Commission may not use any funds appropriated to carry out sections 5 or 18 of the Federal Trade Commission Act (15 U.S.C. 45, 57(a)) for fiscal years 1983 or 1984 to investigate, prescribe any rule or regulation with respect to, or issue any order concerning any State-licensed profession; Provided however that nothing in this section shall limit the existing authority of the Commission with respect to agreements among members of any State-licensed profession to:

(1) fix prices;

(2) restrict the terms or conditions under which professional services may be provided, other than restrictions on the scope of professional practice;

(3) limit the dissemination of truthful information concerning prices, terms, or conditions of professional services; or

(4) engage in or coerce or induce any person to engage in a group boycott against a competitor.

(B) The Commission shall provide to the President and the Congress no later than December 31, 1983 a report on the economic effects of Federal and State regulation of State-licensed professions, including recommendations concerning the appropriate scope of Federal jurisdiction over State-licensed professions.

(C) For purposes of this Act:

(1) "State" includes the District of Columbia.

(2) "State-licensed profession" means any profession subject to licensure, or certification by a State, the practice of which requires advanced training in a field of science or learning customarily acquired by a course of specialized instruction.

(3) "Scope of professional practice" means the professional duties or tasks that a member of a State-licensed profession is authorized by law to perform, including conditions of licensure such as education, experience, or training.

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
ROUTE SLIP

TO <u>J. L. Cullen</u>	Take necessary action <input type="checkbox"/>
<u>Don Moran</u>	Approval or signature <input type="checkbox"/>
<u>Bob Thompson</u>	Comment <input type="checkbox"/>
<u>Jim Cicconi ✓</u>	Prepare reply <input type="checkbox"/>
<u> </u>	Discuss with me <input type="checkbox"/>
<u> </u>	For your information <input type="checkbox"/>
<u> </u>	See remarks below <input checked="" type="checkbox"/>

FROM Chris DeMuth                      DATE 5-10-82

REMARKS

Attached is a slightly revised version of the FTC moratorium compromise language Dave Stockman sent to Jim Baker Friday. This version has been given to Gary Lee, who will find it hard to reject, since it embodies his agreement with Dave two weeks ago. I am also sending a copy to Senator Kasten, who is currently planning to offer a less expansive moratorium in mark-up tomorrow, which I understand will be defeated if it is the only alternative to the McClure/AMA total-exemption language. Jim Miller prefers the Kasten proposal, but I think he will find the attached version acceptable. I doubt the attached will succeed where the current Kasten version will not--but it just might, and if so will avert a show-down on the Senate floor.

Attachment

97th CONGRESS

1st SESSION H.R. \_\_\_\_\_

To place a moratorium on certain activities of the  
Federal Trade Commission with respect to  
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(3) "Scope of professional practice" means the professional duties or tasks that a member of a State-licensed profession is authorized by law to perform, including conditions of licensure such as education, experience, or training.

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THE WHITE HOUSE  
WASHINGTON

May 4, 1982

TO: JAB III

RE: FTC Reauthorization Bill

I checked with Don Moran (in lieu of Stockman) re the status of this.

He says they are very aware of the AMA's concerns about the bill. They do not fully agree with the position that Jim Miller has taken on the issue, and are right now trying to work out a compromise that will take care of the AMA's concerns and with Miller's. Don says it should be worked out in the next day or two.

However, he also said that if Miller hangs tough OMB will try to overrule him on the issue.

\* { Guidance: at the moment, OMB is trying to work out a compromise provision that is acceptable to both the AMA and FTC.

Don promised me a one-pager when the matter is taken care of. If I have not heard by Friday, I'll call and prod them.

Call Stu Spencer

*JC*

THE WHITE HOUSE  
WASHINGTON

May 4, 1982

TO: JAB III

RE: FTC Reauthorization Bill

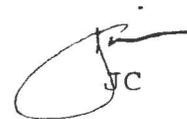
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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

12222

March 31, 1982

Honorable James Florio  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Florio:

I am writing with regard to the reauthorization of the Federal Trade Commission currently under consideration by your Committee.

The Administration generally supports the position expressed by Chairman James C. Miller III in testimony before the Senate Committee on Commerce, Science and Transportation on March 18 that statutory definitions of "unfair acts or practices" and "deceptive acts or practices" would be desirable. The definitions proposed by Chairman Miller would clarify the vague and subjective standards of the current law, provide greater certainty to private parties and the Commission's own enforcement officials, and ensure that the Federal Trade Commission Act is focused on actual cases of consumer harm.

Provided these changes are made, the administration would not support proposals, such as those contained in S.1984 and H.R.3722, to grant blanket immunity to the professions from the Commission's antitrust and consumer protection jurisdiction. With the Commission's legal authority appropriately clarified and circumscribed, we see no cause for exempting any particular group or economic sector from that authority.

Sincerely,

David Stockman  
Director

12222

U.S. House of Representatives  
Committee on Energy and Commerce  
Room 2125, Rayburn House Office Building  
Washington, D.C. 20515

September 10, 1982

ROBERT STROMM, N.Y.  
JAMES M. WALSH, CALIF.  
MATTHEW W. WATKINS, ILL.  
FRANK R. ZEPP, IND.  
JAMES J. FLORIO, N.J.  
ANTHONY TERRY, CONN.  
JAMES M. WELLS, N.Y.  
FRANK J. MURPHY, MASS.  
THOMAS A. LUKEN, OHIO  
DICK WADSWORTH, PA.  
ALBERT GORE, JR., TENN.  
BARBARA A. MIKULSKI, MD.  
RONALD M. MOTTLE, OHIO  
PHIL GRAMM, TEX.  
AL SWIFT, WASH.  
MICKEY LELAND, TEX.  
RICHARD C. SHELBY, ALA.  
GARDNER COLLINS, ILL.  
MIKE SYNAR, OKLA.  
W. J. "BILLY" TAUZIN, LA.  
RON WYDEN, OREG.  
RALPH M. HALL, TEX.

FRANK M. POTTER, JR.  
CHIEF COUNSEL AND STAFF DIRECTOR

Dear Colleague:

The House will soon be considering H.R. 6995, the FTC Reauthorization Bill, which we have cosponsored with Congressmen Dingell and Florio. As ordered reported by the Energy and Commerce Committee on Wednesday, August 18, 1982, the bill reflects a bipartisan consensus on several issues respecting the authority and procedures of the FTC. Specifically, the bill includes provisions which define unfairness, improve and make permanent the legislative veto, and make permanent the agricultural cooperatives limitation.

However, H.R. 6995 does not at present address the Commission's jurisdiction over professionals. H.R. 3722, introduced by Representatives Luken and Lee, would exempt professionals from FTC jurisdiction until further Congressional action. After careful consideration of the Luken-Lee bill, we have determined that it goes too far by placing professionals above the law. Of equal importance, it is our belief that adoption of an exemption for the professions on the Floor would virtually guarantee that no FTC reauthorization bill would become law this year. Should this occur, critical provisions such as legislative veto and the provision relating to agricultural cooperatives would expire on September 30.

Therefore, we have developed an alternative approach which we intend to offer with Messrs. Dingell and Florio as a substitute to Luken-Lee. This substitute would protect State laws which address educational and licensing requirements relating to professionals which are properly within the jurisdiction of the States. It would limit the ability of the FTC to challenge State laws in this area to those circumstances in which the FTC could prove that the State law in question prescribed a business or commercial practice of professionals and that the practice is anticompetitive. This imposes an additional and appropriate burden upon the FTC when proceeding against the professions.

Finally, the substitute incorporates the State Action Doctrine when the FTC is operating pursuant to its antitrust authority. This doctrine prohibits the FTC from overturning a State law if the State is actively enforcing and administering the law.

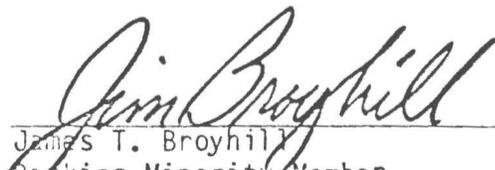
We believe that our proposal strikes a reasonable balance with respect to this issue and clearly puts professionals in a more advantageous position than under current law.

We would greatly appreciate your support when it is offered on the Floor. Should you have any questions, please contact Margaret Durbin or Jane Sutter at 6-3400.

Sincerely,



Norman F. Lent  
Ranking Minority Member  
Subcommittee on Commerce,  
Transportation, and Tourism



James T. Broynhill  
Ranking Minority Member  
Committee on Energy and Commerce

THE WHITE HOUSE

WASHINGTON

August 5, 1982

*To Cicconi FYI  
8/10  
MDT*

MEMORANDUM TO ED MEESE  
JIM BAKER  
MIKE DEEVER

THRU: ED HARPER  
KEN DUBERSTEIN *Ken D.*

FROM: BOB THOMPSON *BT*

Jim Miller would like a definitive decision one way or the other on the ticklish issue of whether or not we support exempting the AMA from FTC jurisdiction.

A brief meeting with appropriate Administration officials might be necessary.

FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

July 30, 1982

OFFICE OF  
CONGRESSIONAL RELATIONS  
(202) 523-3620

FTC Reauthorization Briefing Paper

A. White House Action Needed for Chairman Miller's FTC Reforms to Succeed

Despite an Administration position favoring compromise, a stalemate has developed in Congress over a proposal by professional groups - - primarily, the American Medical Association (AMA) - - to be totally exempted from the jurisdiction of the Federal Trade Commission. Since the AMA proposal takes the form of an amendment to the FTC reauthorization, the result may be that FTC Chairman Jim Miller's legislative initiatives to narrow the FTC's statutory discretion, strongly supported by the business community, will be lost.

A Presidential threat to veto legislation giving wealthy professional groups such as the AMA and their members the privileged, immunized status they seek would break the logjam. In addition - - or in the alternative - - active White House support for the efforts by Chairman Miller and House Republicans Rep. Lent and Rep. Broyhill to broker a compromise would end the stalemate.

B. Background of the Stalemate

Resolution of the AMA issue is the biggest hurdle in the way of Chairman Miller's FTC reform proposals, because House Energy & Commerce Committee leaders have announced they will not act on the FTC reauthorization until agreement is reached that prevents the AMA from receiving a blanket exemption. On the Senate side, the Commerce, Science & Transportation Committee already has approved the AMA amendment to an FTC bill containing many of Chairman Miller's reforms. However, because of their opposition to the AMA amendment, Senate Committee leaders will wait until after the House Committee acts to schedule the bill for floor action.

C. The Congressional Compromise

Negotiations among Republican and Democratic leaders of the House Energy & Commerce Committee have centered on compromises resembling Chairman Miller's proposal to specify that FTC jurisdiction only applies to the commercial or business aspects of a professional practice. The state action doctrine would apply to all other FTC activity in the professions area and Chairman Miller would agree to a legislative scheme to ensure the FTC keeps out of licensure and quality of care issues.  
(See attachment A.)

#### D. Reasons for White House Support for Compromise

- Most House & Senate Republicans want to support a compromise. After the veto of the used car rule (on which Chairman Miller was neutral), they want to avoid another anti-consumer vote; but, the AMA has heavily contributed to many campaigns, and members want to do something for the AMA, short of the total exemption. (See attachments B & C.)
- The business community strongly supports Chairman Miller's FTC reform proposals and shares his concern over resolving the AMA amendment, so the reforms may succeed. (See attachment D.) Moreover, the Washington Business Group on Health, composed of over 200 major corporations (See attachment E.) specifically opposes the AMA amendment.
- The FTC is just one step in a power grab by the AMA. The AMA House of Delegates in June passed resolutions endorsing model state legislation and draft federal legislation to narrow both the states' and DOJ's antitrust jurisdiction over the professions. (See attachment F.)
- Administration opposition to the AMA amendment would be consistent with its general support for increased competition in the delivery of health care as a means for controlling the cost of health care.
- This year may be the one chance Administration reformists have to make the lasting reforms to FTC law. Next Congress, after six more months of Chairman Miller's leadership, the FTC simply won't be perceived as a rogue agency, and the momentum for reform may be lost.

#### E. Likely AMA Reaction

An impassioned response to Administration support for Chairman Miller may be expected from Congressional allies of the AMA, especially Sen. McClure. Sen. McClure was angered earlier this year when OMB Director Stockman supported compromise rather than a bill Sen. McClure had sponsored to give the professions their FTC exemption. 10 Republicans and 6 Democrats have cosponsored Sen. McClure's bill. However, other Senators, including the Committee sponsor of the AMA amendment to the FTC reauthorization bill -- Sen. Stevens -- said during Committee markup that they hope a compromise eventually can be worked out.

In the House of Representatives, the leading advocates for the AMA are Rep. Lee and Rep. Luken, who are sponsors of a bill that would provide the complete exemption. 208 of their colleagues have cosponsored the bill. For the reasons already stated, Chairman Miller believes that the great majority of these Congressmen will want to support a compromise.

Chairman Miller is not unmindful of the political reach and clout of the AMA. There's no question that the AMA is determined to fight this matter to the bitter end and that it will react vehemently to strong White House support for Chairman Miller's position, even more so because of its support for President Reagan during the 1980 campaign.

However, it is Chairman Miller's strongly-held belief that a total exemption from FTC jurisdiction in the manner proposed by the AMA is not in the public interest. Moreover, he believes that Administration opposition to the AMA exemption will be strongly supported across the country. (See attachment G for editorial comment.)

F. Action Recommended:

1. The President transmit a letter to leaders of the House and Senate Commerce Committees (See attachment H for list.), stating that he will veto legislation containing the blanket, total exemption for professional groups.
2. The Office of Legislation, The White House, actively support the efforts of Chairman Miller and House Republicans to achieve a compromise on the professions issue.

Attachment list:

- Attachment A: Chairman Miller's 6-23-82 speech on the professions (see page 3).
- Attachment B: House Republican Research Committee Issue paper, "The Federal Trade Commission (FTC) and the Professions"; June 23, 1982.
- Attachment C: Article from Newsday quoting Rep. Lent; May 18, 1982.
- Attachment D: Antitrust & Trade Regulation Report article on FTC strategy; July 22, 1982.
- Attachment E: Membership list and position of Washington Business Group on Health.
- Attachment F: AMA draft legislation.
- Attachment G: Editorial comment.
- Attachment H: List of Committee leaders.

FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

7/30/82

OFFICE OF  
CONGRESSIONAL RELATIONS  
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FTC Reauthorization Briefing Paper

A. White House Action Needed for Chairman Miller's FTC Reforms to Succeed

Despite an Administration position favoring compromise, a stalemate has developed in Congress over a proposal by professional groups - - primarily, the American Medical Association (AMA) - - to be totally exempted from the jurisdiction of the Federal Trade Commission. Since the AMA proposal takes the form of an amendment to the FTC reauthorization, the result may be that FTC Chairman Jim Miller's legislative initiatives to narrow the FTC's statutory discretion, strongly supported by the business community, will be lost.

A Presidential threat to veto legislation giving wealthy professional groups such as the AMA and their members the privileged, immunized status they seek would break the logjam. In addition - - or in the alternative - - active White House support for the efforts by Chairman Miller and House Republicans Rep. Lent and Rep. Broyhill to broker a compromise would end the stalemate.

B. Background of the Stalemate

Resolution of the AMA issue is the biggest hurdle in the way of Chairman Miller's FTC reform proposals, because House Energy & Commerce Committee leaders have announced they will not act on the FTC reauthorization until agreement is reached that prevents the AMA from receiving a blanket exemption. On the Senate side, the Commerce, Science & Transportation Committee already has approved the AMA amendment to an FTC bill containing many of Chairman Miller's reforms. However, because of their opposition to the AMA amendment, Senate Committee leaders will wait until after the House Committee acts to schedule the bill for floor action.

C. The Congressional Compromise

Negotiations among Republican and Democratic leaders of the House Energy & Commerce Committee have centered on compromises resembling Chairman Miller's proposal to specify that FTC jurisdiction only applies to the commercial or business aspects of a professional practice. The state action doctrine would apply to all other FTC activity in the professions area and Chairman Miller would agree to a legislative scheme to ensure the FTC keeps out of licensure and quality of care issues.  
(See attachment A.)

#### D. Reasons for White House Support for Compromise

- Most House & Senate Republicans want to support a compromise. After the veto of the used car rule (on which Chairman Miller was neutral), they want to avoid another anti-consumer vote; but, the AMA has heavily contributed to many campaigns, and members want to do something for the AMA, short of the total exemption. (See attachments B & C.)
- The business community strongly supports Chairman Miller's FTC reform proposals and shares his concern over resolving the AMA amendment, so the reforms may succeed. (See attachment D.) Moreover, the Washington Business Group on Health, composed of over 200 major corporations, (See attachment E.) specifically opposes the AMA amendment.
- The FTC is just one step in a power grab by the AMA. The AMA House of Delegates in June passed resolutions endorsing model state legislation and draft federal legislation to narrow both the states' and DOJ's antitrust jurisdiction over the professions. (See attachment F.)
- Administration opposition to the AMA amendment would be consistent with its general support for increased competition in the delivery of health care as a means for controlling the cost of health care.
- This year may be the one chance Administration reformists have to make the lasting reforms to FTC law. Next Congress, after six more months of Chairman Miller's leadership, the FTC simply won't be perceived as a rogue agency, and the momentum for reform may be lost.

#### E. Likely AMA Reaction

Chairman Miller is not unmindful of the political reach and clout of the AMA. There's no question that the AMA is determined to fight this matter to the bitter end and that it will react vehemently to strong White House support for Chairman Miller's position, even more so because of its support for President Reagan during the 1980 campaign.

However, it is Chairman Miller's strongly-held belief that a total exemption from FTC jurisdiction in the manner proposed by the AMA is not in the public interest. Moreover, he believes that Administration opposition to the AMA exemption will be strongly supported across the country. (See attachment G for editorial comment.)

F. Action Recommended:

1. The President transmit a letter to leaders of the House and Senate Commerce Committees (See attached list.), stating that he will veto legislation containing the blanket, total exemption for professional groups.
2. The Office of Legislation, The White House, actively support the efforts of Chairman Miller and House Republicans to achieve a compromise on the professions issue.

July 30, 1982

FEDERAL TRADE COMMISSION  
WASHINGTON, D. C. 20580

REMARKS OF JAMES C. MILLER III\*  
CHAIRMAN  
FEDERAL TRADE COMMISSION  
BEFORE THE  
WASHINGTON BUSINESS GROUP ON HEALTH  
WASHINGTON, D.C.  
JUNE 23, 1982

Thank you very much.

I am very grateful to Bill Goldbeck for providing me the opportunity to speak to you today. I'm here to talk to you about a piece of special interest legislation now pending in Congress. This legislation could affect you as consumers, could affect you as employers, and could affect your companies' balance sheets, for if it becomes law in its present form health care costs may well rise faster than necessary.

The special interest legislation I'm talking about, believe it or not, is attached to the FTC's reauthorization bill, a measure essential to the agency's very survival.

The bill now before the Senate contains a provision that would exempt the so-called "learned professions" from FTC enforcement of the antitrust and consumer protection laws. The bill would thereby create a "special class" of citizens, including doctors, dentists, and lawyers.

Let me make clear my belief that most professionals are honest and law-abiding people who provide valuable public services. Most professionals would not consciously violate antitrust or other laws concerning business practices. But this special interest legislation would exempt not only the law abiding, but also those who do violate the laws administered by the Commission.

---

\* The views expressed are the Chairman's and do not necessarily reflect those of the other Commissioners.

corporation - an obvious potential source of inflated costs. Further, in the AMA case, the Commission challenged unlawful agreements preventing physicians from forming business partnerships with licensed non-physicians, such as clinical psychologists. The competition that clinical psychologists and other licensed provider groups can bring to the marketplace can mean lower health care costs.

As you can see, the Commission has been particularly active in challenging private restraints on the competitive, business, and financing aspects of delivering professional health services. These actions and other efforts by the Commission have helped contain health care costs. But if the special interest exemption for professionals were enacted, this protection would come to an end.

Most of you know that I am not known as a wild-eyed regulator. Like most economists, I conclude that when markets are freed from anticompetitive restraints, fraud, and deception, they tend to work more efficiently. That is why I am so troubled by the professions' bid to be exempt from FTC scrutiny.

There are, of course, limits to the FTC's role in the health care area. For instance, the Commission should not be second-guessing the medical professions where true quality of care concerns are the real issue. Moreover, important principles of federalism must be recognized and observed. The Commission should not be second-guessing state legislatures in the reasonable exercise of their essential role in licensing and accrediting professionals, and in protecting the health of their citizens.

But when we look at the commercial aspects of professionals -- their business and competitive practices -- I must confess that the free market economist in me takes over from the states' rights political scientist. There I believe the FTC does have a role to play in assuring that private restraints do not hamper the efficient workings of the marketplace.

I believe that the FTC has an important role in assuring that our Nation has a competitive market for health care services that is free from fraud and deception. Obviously, the Commission should be careful not to overstep its statutory authority or to venture into areas where it fails to have the relevant expertise. But it can hardly do its job if its hands are tied.

A medical degree should be an indication of technical competence. It should not convey immunity from FTC law enforcement.

Thank you very much.

# # #



# House Republican Research Committee

1616 LHOB, WASHINGTON, D.C. 20515 • TELEPHONE NO. 202/225-0871

EDWARD R. MADIGAN  
Chairman

ROBERT H. MICHEL  
Minority Leader  
Ex-Officio

WILLIAM E. O'CONNOR, JR.  
Executive Director

July 23, 1982

## Task Force on Congressional and Regulatory Reform

Jerry Lewis  
Chairman

Bob Okun  
Director

### The Federal Trade Commission (FTC) and the Professions

The problem of monopoly in America is most serious when anticompetitive practices are sanctioned by government. State or Federal endorsements of barriers to entry, price fixing agreements or other collusive activities can be highly resistant to marketplace pressures. Professional services have been affected by such activities, particularly at the state level, and the FTC has been increasing its involvement to improve the competitive situation. The Commission's goal regarding professionals is to promote competition and freedom of choice as an alternative to "big-brother" regulation. Indeed, in a recent article that is highly critical of many FTC cases, Professor Ernest Gellhorn singled out the Commission's actions vis-a-vis professionals as making good economic sense and providing benefit to consumers.

Many economists have concluded that the markets for professional services are not competitive. Certainly, state and local regulation of the quality of health and other professional services is highly desirable, as is much of professional self-regulation. The vast majority of professionals undoubtedly oppose harmful anticompetitive practices in their fields. However, an extensive array of private restrictions and government regulations control aspects of professional practice which have little to do with ethical standards, but have a significant economic effect on the market for professional services. These include dictating not only who may enter the profession and what services may be offered to the public, but also how professionals may conduct the business aspects of their practices. This is particularly true in the health professions, which have received most of the attention because of the large and rapidly increasing expenditures for health care. Greater reliance on market forces and less regulation can help to stem these rising health care costs.

There is a strong case that the FTC should not have scrutiny over "quality of care" aspects of doctors, dentists, lawyers and other groups. The FTC is neither a competent nor the appropriate organization to determine, for example, the medical qualifications of physicians or other professional standards. The case for any FTC role is limited to the economic activities of these groups such as price fixing, group boycotts or other restrictions on the business aspects of professional practice.

Private restrictions on professionals, as well as government regulation, create costly inefficiencies. The FTC has built on a significant body of economic evidence indicating that certain types of professional regulation can impose substantial costs on consumers. Restrictions by states on advertising the prices of prescription drugs have been estimated to cost consumers \$134 million annually. Regulations restricting advertising of eyeglasses resulted in consumers paying 25 to 40 percent more for prescription eyewear.

Much more work remains to be done in assessing the costs and benefits of various types of restrictions on professional practice. A 1979 study by the Commission's Bureau of Economics found that regulations limiting the way optometrists may organize their practices increased prices by 17 percent without increasing the quality of service. Since such restrictions are widespread in markets such as vision care (\$4 billion in annual sales) and dentistry (\$14 billion spent annually), the economic loss to consumers is likely to amount to billions of dollars. Other studies have demonstrated that higher prices prevent some consumers from obtaining needed services, which further injures the public welfare.

The FTC has adopted only one rule directed at health professionals. In that rule the FTC acted in a deregulatory manner to preempt state regulations that restricted truthful advertising by eye doctors. The economic case against these restrictions was overwhelming, and market statistics following the Commission's action show substantial savings for consumers.

Overall, the FTC activities regarding the professions increase consumer welfare by permitting market forces to operate without interference from private collusive activity or burdensome government regulation. If the Commission's activities duplicated efforts at the state level or trampled on states' legitimate prerogatives, then there would be reason for concern. This does not appear to be the case. Evidence suggests that the political power professional associations wield at the state level often protects themselves from competition, with little or no resistance from state authorities.

Professional groups seeking to restrict competitive behavior undoubtedly intend that their actions serve the public. However, the economic costs to consumers have been neglected too often, and the public benefits claimed from restrictions on competition have not been substantiated. In its early period of involvement in the professions, the FTC exhibited some excessive rhetoric, which failed to acknowledge the traditional bases of professional regulation. The FTC displayed overblown fears of evil conspiracies. The Commission's more recent actions reflect a record of sound and careful economic analysis, though. Such actions have improved the health and well-being of consumers through wider availability of quality professional services, at lower cost.

### Conclusion

In a recent editorial, the Wall Street Journal stated:

"In general, it's a good idea to keep the federal government out of things. Generally, more power to the FTC has meant more punitive and unnecessary regulation. But this time the Commission is on the side of the markets. And it bears repeating that the purpose of (this) deregulation (effort) is to let the market in..."

*International*  
New York City

NEWSPAY  
LONG ISLAND, N. Y.  
E-460,000 3-570,000

MAY-18-82

# Regulation of Professionals Backed by FTC's Chairman

By Judith Bender

Newsday Washington Bureau

Washington — The Federal Trade Commission chairman, a leading proponent of stricter congressional curbs on regulatory authority, said yesterday that Congress would be making a big mistake politically if it adopted a measure exempting professionals from his agency's regulation.

The chairman, James C. Miller III, said he was "very disturbed" about a measure approved by the Senate Commerce Committee that would bar the commission from scrutinizing or moving against professionals—including doctors, dentists and lawyers—who might have violated antitrust laws or engaged in deceptive consumer practices.

"It doesn't make sense to be establishing a privileged class," he said, "and it's hard for me to understand how the Senate and the House could explain [to voters] . . . how they could set up separate classes. It smacks of elitism." Miller said the measure was "bad law, bad economics and bad politics," particularly when health care expenditures account for nearly 10 per cent of the nation's gross national product.

Miller's remarks to a small group of reporters over coffee and doughnuts came just a day before the full Senate is to take up a resolution vetoing the FTC's controversial used-car rule, which requires used-car dealers to disclose far more information about defects than they now do. Miller, who was appointed last year by President

Editorial, Page 50

Reagan and was not on the commission when the rule was issued, declined to say whether he approved of that action.

Despite Miller's vigorous efforts to the contrary, the Republican-ruled Senate Commerce Committee voted to stop the commission from continuing its crackdown on professional boycotting of low-cost medical groups, price-fixing and professional opposition to advertising. Miller and others say the full Senate probably will approve the measure.

In the House, however, the administration may be more persuasive, at least with some Republicans, and passage there of a similar bill is not as certain, according to congressional sources. Indeed, there have been some significant defections. A key Republican, Rep. Norman Lent of East Rockaway, the senior GOP member on the subcommittee considering the FTC authorizing bill, said yesterday that after a recent meeting with Miller and budget director David Stockman, he "was not going to push the bill."

Lent, listed as a cosponsor of the House bill, said: "I just don't think it's a good idea to cut out a certain segment of society from FTC's jurisdiction. The House bill differs from the Senate version in that it places a moratorium on further commission enforcement until the Congress spells out the commission's jurisdiction more clearly."

## DISAGREEMENT OVER STRATEGY IS KEY FACTOR TO FUTURE OF FTC REAUTHORIZATION MEASURE

The Federal Trade Commission's reauthorization bill remains stalled because of an apparent impasse over whether to exempt professionals, such as doctors, from the FTC's jurisdiction.

Confident of having the votes, the American Medical Association and other professionals' groups have so far eschewed any willingness to compromise, according to Capitol Hill observers. Their position brings them into direct disagreement not only with an important congressman but also with interest groups concerned about other proposed amendments to the FTC Act.

Rep. James J. Florio (D-NJ), chairman of the subcommittee with FTC oversight authority, continues to insist that a compromise be made before he will act. However, no serious compromise talks have been commenced. "We keep talking at a staff level, but we have nothing in hand," said one staffer. Florio is amenable to foregoing the authorization bill and accepting a continuing resolution after the FTC's current authorization runs out in September, according to close observers.

Florio's strategic preference differs from that of FTC Chairman James C. Miller III. According to informed sources, Miller opposes the idea of going for a continuing resolution to fund the agency, fearful that the doctors and other groups will easily be able to accomplish with amendments to the appropriations bill what was impossible with the authorization bill.

In any event, the agency's hopes of forestalling restrictive amendments are dim. The AMA and its allies—veterinarians, dentists, ophthalmologists, architects, and engineers—boast 210 co-sponsors to a bill (H.R. 3722), sponsored by Reps. Thomas A. Luken (D-Ohio) and Gary Lee (R-NY). The Luken-Lee bill would prohibit the FTC from taking actions involving professionals, unless Congress provides it with specific authority. Officials of professionals groups told BNA that they hope to circumvent Florio.

At a June convention, the AMA House of Delegates passed resolutions endorsing legislative initiatives to exempt professionals not only from the FTC's jurisdiction but also from any other federal or state antitrust attack. Model state and federal legislation has been prepared, which, according to the AMA's minutes, "would require courts reviewing antitrust cases involving the sale or delivery of health services to consider whether the activities are directed, authorized, or encouraged by the federal or state government, whether the activity is intended to maintain or improve the quality of health care in the public interest, and whether the activity is intended to control costs in the public interest."

Miller, who has strongly opposed the professionals' amendment, got some belated help from several quarters this week. However, Miller has not been able to obtain a solid commitment from the White House to veto a bill exempting professionals from FTC attack. The White House has spoken disparagingly of the professionals' amendment, but it has been heavily lobbied by the professionals and now is considered essentially neutral.

One source of aid will be a new coalition of 33 groups, including such members as the American Nurses Association, American Psychological Association, International Chiropractors Association, and American Retail Federation. They announced their joint opposition to the professionals' exemption at a July 19 news conference attended by Florio and Sen. Bob Packwood (R-Ore). Thomas Nichols, coalition spokesman and counsel to the American Nurses Association, said, "The health practitioners that make up our coalition are not afraid to compete openly and fairly."

Packwood, the chairman of the Senate Commerce Committee, hinted broadly at the press conference that he would delay Senate floor action on S. 2499, which contains a professionals exemption, until the House Commerce Committee acts.

The National Association of Attorneys General is also expected to fight the exemption for professionals.

"Most business and trade groups oppose the professionals largely because it could interfere with other gains they hope to make in the FTC authorization measure. "As long as they stand where they are, it's got the kiss of death to it," lamented one industry lobbyist. The U.S. Chamber of Commerce has remained neutral on the matter because of cross-cutting currents within the Chamber's membership.

Meanwhile, the stage is set for a Senate Commerce Committee hearing on a Miller proposal to redefine the Commission's authority to challenge deceptive acts or practices. The committee already has acted to restrict the FTC's authority to regulate "unfair" commercial speech but deferred consideration of deception. Most business lobbyists doubt that Congress will restrict the Commission's deception jurisdiction but note that the deception hearing could set the stage for action next year. Senate Commerce Committee staffers have warned some lobbyists that pushing too hard on the deception issue could jeopardize the authorization legislation as a whole.

In testimony prepared for delivery on July 22 before the Senate Commerce Committee, Commissioner David A. Clanton will call for the Commission to issue a policy statement on how it will exercise its authority to attack deceptive acts or practices.

Clanton's position is intended to provide an alternative to congressional definition of "deception," which Clanton said would be "premature." Chairman James C. Miller III supports a statutory definition of deception, while Commissioners Michael Pertschuk and Patricia P. Bailey oppose any change. All four are scheduled to testify.

Clanton will argue that the evidence does not justify statutory redefinition of deception. "In my view, the basic legal standards are still valid; it is primarily the discretionary application of those standards that may require further refinement and clarification," according to Clanton.

Preparations for the hearing included a minor tiff between the Chamber of Commerce and National Association of Manufacturers. The two groups have identical positions on the deception issue, but the Chamber of Commerce rebuffed a suggestion that one spokesman represent both groups at the hearing.

WBGH MEMBERSHIP LIST  
As of 5-15-82

AMAX	CPC International	FMC	Jack Eckerd Corporation
AMF	CONOCO	Federated Dept. Stores	Jewel Companies
ARA Services	Campbell Soup	Firestone Tire & Rubber	John Hancock
ASARCO	Carter Hawley Hale	Ford Motor	Johnson & Johnson
AT&T	Caterpillar Tractor		
Aetna Life & Casualty	Champion International	GATX Corporation	Kaiser
Air Products & Chemicals	Chemical Bank	GTE Serv. Corporation	Kimberly-Clark
Allied Chemical	Chrysler	General Electric	Koppers
Aluminum Co. of America	Citibank	General Foods	Kraft
American Can	Cities Service	General Mills	Kroger Company
American Cyanamid	Coca-Cola	General Motors	
American Express	Connecticut General Life	General Signal	LTV
American Home Products	Consolidated Edison	General Tire & Rubber	
American Medical Int'l	Container Corp of America	Georgia-Pacific	MCA
American Natural Serv Co.	Continental Bank	Goodrich Company, B.F.	Macy, R.H.
American Standard	Continental Group	Goodyear Tire & Rubber	Manufacturers Hanover Trust
Amsted Industries	Coopers & Lybrand	Grace, W.R.	Martin Marietta
Armeo Inc.	Corning Glass Works	Gulf Oil	Massachusetts Mutual Life
Armstrong Cork			Melville Corporation
Atlantic Richfield	Dana Corporation	Heinz, USA	Mercer, William M. & Co
	Deere & Company	Hellmuth & Assoc, C.T.	Merek
Bank of America	Digital Equipment	Hewlett-Packard	Merrill-Lynch
Bechtel	Dillingham	Hoffmann-LaRoche	Metropolitan Life
Becton, Dickinson & Co	Dresser	Honeywell	Milliken & Company
Bethlehem Steel		Hospital Corp of America	Mobil Oil
Boeing	EDS Federal		Mon'santo
Boise Cascade	E.I. duPont de Nemours	INA Corporation	Montgomery Ward
Bristol Myers	Eastman Kodak	Ingersoll-Rand	Morgan Guaranty Trust
Buck Consulting Act.	Eli Lilly	Inland Steel	Motorla
Burlington Industries	Equitable Life	Inmont Steel	
Burlington Northern	Ernst & Whinney	Int'l Business Machines	
	Exxon	International Harvester	
		International Paper	

Nabisco  
Nat'l Chain Drug Stores  
Nat'l Medical Enterprises  
Norton Company

Occidental Life  
Olin  
Owens-Corning Fiberglas  
Owens-Illinois

PACCAR  
PPG  
PIII Group  
Penney, JC  
PepsiCo  
Pfizer  
Philip Morris  
Pitney Bowes  
Pittston Company  
Procter & Gamble  
Provident Life  
Prudential

Quaker Oats

Ralston Purina  
Republic Steel  
Reynolds Metals  
Rockwell International  
Rohm & Haas

SCM  
St. Joe Minerals  
St. Regis Paper  
Schering-Plough  
Searle & Company, G.D.

Sears, Roebuck & Co  
Shell Oil  
Sherwin-Williams  
SmithKline  
Sperry Corporation  
Std. Oil of California  
Std. Oil (Indiana)  
Std. Oil Co. Ohio  
Stanley Works  
Stauffer Chemical  
Sun Company  
Sundstrand Chemical

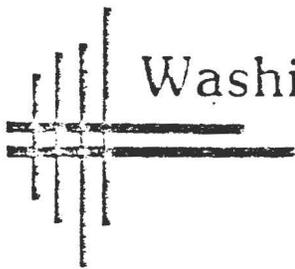
TRW  
Tenneco  
Texas Eastern  
Texas Gas Transmission  
Tosco Corporation  
Travelers

Union Camp  
Union Carbide  
Union Oil of California  
Union Pacific  
Up-John  
U.S. Steel

Valley National Bank

Warner Lambert  
Warsaw Ins Companies  
Wells Fargo  
Weyerhaeuser  
Westinghouse  
Wheelabrator-Frye  
Whirlpool  
Wyatt Company

Xerox



# Washington Business Group on Health

July 19, 1982

## ISSUE DISCUSSION PAPER

FTC Reauthorization and the Exemption of the Professions

### THE ISSUE

Congress is now considering the FTC reauthorization legislation. In the Senate, the reauthorization bill is S. 2499, sponsored by Bob Kasten (R-WI). The bill contains a provision to exempt the medical profession from FTC jurisdiction. The exemption would also apply to other professions but due to the limited charter of the WBGH, this paper is restricted to the issues of the medical profession. In simple terms, the issue is whether or not this exemption should be allowed.

### LEGISLATIVE STATUS

In the Senate, S. 2499 passed the Senate Commerce Committee, in May, 10-5. Committee Chairman Bob Packwood (R-OR) was opposed and will delay taking the bill to the Senate floor as long as possible.

The reauthorization must take place by September 30, or the FTC must receive a continuing resolution, or the FTC will be effectively out of business.

In the House, the FTC received a one-year reauthorization, that did not change its authority, from the Subcommittee on Commerce, Transportation, and Tourism. Next, the full Energy and Commerce Committee must pass on reauthorization. A House bill, H.R. 3722 sponsored by Thomas Luken (D-OH) and Gary Lee (R-NY) has 206 co-sponsors and places a moratorium on FTC activity in health. The AMA wants an amendment along the lines of H.R. 3722 to be attached to the FTC reauthorization bill when it is heard in the Energy and Commerce Committee. Subcommittee Chairman James Florio (D-NY) opposes the exemption or moratorium.

### THE ADMINISTRATION

There is no formal position. Observers feel they are not enthusiastic about the AMA position since, despite heavy urging to do so, they have not given an endorsement. Also, and even more important, has been the freedom which FTC Chairman James C. Miller III (a Reagan appointee) has been given to loudly oppose the AMA. Chairman Miller spoke at our 1982 Annual Conference on June 23 to explain why he felt the AMA position would be directly detrimental to competition in health care delivery and to the cost management efforts of employers. A copy of his remarks are enclosed.

### THE WBGH POSITION

This issue was raised at the June 22 Policy Committee meeting at which time it was decided that the WBGH would oppose the exemption on the basis that it was contrary to our dual objectives of cost management and stimulating increased competition in the medical care market place. The Board confirmed this position at its July 15 meeting after hearing staff report that 100% of the WBGH members polled by telephone or spoken with in person on this issue agreed with the decision to oppose. The Board requested that staff conduct a written survey of the membership to gain a final and more formal record of the members' views. A reply form is enclosed.

REPORT OF THE BOARD OF TRUSTEES

Report: Q  
(A-82)

Subject: Remedial Antitrust Legislation  
(Resolution 9, I-81)

Presented by: Joseph F. Boyle, M. D, Chairman

Referred to: Reference Committee B  
(Malcolm O. Scanahorn, M. D, Chairman)

---

1 Resolution 9 (I-81), which was referred to the Board of Trustees,  
2 calls upon the AMA to seek enactment of federal and state legislation  
3 that would recognize that certain reasonable activities in the health  
4 care field do not violate antitrust laws.

5  
6 The Board concurs with the Council on Legislation, which has  
7 studied this matter carefully, that the intent of this resolution  
8 can be carried out by development of draft legislation amending the  
9 Sherman and Clayton Acts at the federal level and amending state  
10 antitrust laws.. Draft legislation applicable to the sale and  
11 delivery of health care services has been developed to accomplish  
12 this reform.

13  
14 The Board has approved two model bills recommended by the  
15 Council on Legislation to amend federal and state antitrust laws.  
16 These bills would require courts reviewing antitrust cases involv-  
17 ing the sale or delivery of health services to consider whether the  
18 activities are directed, authorized or encouraged by the federal or  
19 state government, whether the activity is intended to maintain or  
20 improve the quality of health care in the public interest, and  
21 whether the activity is intended to control costs in the public  
22 interest.

23  
24 The Board recommends adoption of this report in lieu of  
25 Resolution 9.

April 1982

In The General Assembly

State of \_\_\_\_\_

A Bill

To Amend the Antitrust Laws of  
this State Relating to the Sale or  
Delivery of Health Care Services

Be it enacted by the People of the State of \_\_\_\_\_,  
represented in the General Assembly:

[ \_\_\_\_\_ Revised Statutes, Title \_\_\_\_\_, Chapter \_\_\_\_\_,  
Section \_\_\_\_\_ is amended to add the following language:]

Section 1. In determining whether a restraint under the antitrust laws of this state relating to the sale or delivery of health care services is reasonable, the criteria to be considered shall include: (a) whether the activities involved are authorized or encouraged by the federal or state government; and (b) whether the activities involved are intended to maintain or improve the quality of health care or to control costs in the public interest.

Section 2. Activities relating to the sale or delivery of health care services that are conducted pursuant to direction by the federal or state government shall be exempt from the antitrust laws of this state.

Bill No. \_\_\_\_\_

IN THE (SENATE) (HOUSE) OF THE  
UNITED STATES

\_\_\_\_\_ of \_\_\_\_\_ introduced the following bill  
which was read twice and referred  
to the Committee on \_\_\_\_\_.

---

A Bill

Be it enacted by the Senate and House of Representatives of  
the United States in Congress assembled,

Sec. 1. This Act may be cited as the "Clayton and Sherman  
Act Amendments of 1982."

Sec. 2. Title 15, Chapter 1 of the United States Code is  
amended by adding the following new sections:

"Section 32. In determining whether a restraint related to  
the sale or delivery of health care services in or affecting  
interstate commerce is reasonable, the criteria to be  
considered shall include: (1) whether the activities  
involved are authorized or encouraged by the federal or a  
state government; (2) whether the activities involved are  
intended to maintain or improve the quality of health care in  
the public interest; and (3) whether the activities involved  
are intended to control costs in the public interest."

"Section 33. Activities related to the sale or delivery of  
health care services that are conducted pursuant to direction  
by the federal or a state government shall be exempt from  
federal antitrust laws."

Sec. 3. The provisions of this Act shall take effect on the  
date of the enactment of this Act.

## REMEDIAL FEDERAL ANTITRUST LEGISLATION

This bill modifies the federal antitrust laws as they apply to the sale and delivery of health care services. In an antitrust case involving the sale or delivery of health care services, the court would be required to consider three factors (1) whether the activities are authorized or encouraged by federal or state government, (2) whether the activities involved are intended to maintain or improve the quality of health care in the public interest and (3) whether the activities are intended to control costs in the public interest. The bill also provides an antitrust exemption for activities related to the sale or delivery of health care services that are conducted pursuant to the direction of the federal or state government.

- American Medical Association -

Department of Federal Legislation, Division of Legislative Activities

# THE WALL STREET JOURNAL.

FRIDAY, APRIL 2, 1982

## Deregulating the Doctors

We see that the deregulation movement has run into a small case of internal wrangling lately over the issue of how to treat professionals like doctors and dentists. One bunch of self-proclaimed deregulators wants to end the jurisdiction that the Federal Trade Commission now holds over these groups. Another camp of deregulators is fighting to preserve the commission's role. On this one, we are on the side of the Feds.

In the name of deregulation, a bill has been filed in Congress to strip the FTC of its present authority over the trade practices of professions that are already regulated on the state level. But the Reagan administration, so eager to shrink the federal government in most respects, won't go along. In fact the FTC's new deregulating chairman, James C. Miller III, has just testified to Congress that he "fully, strongly and unalterably opposes" the effort. This puts Mr. Miller on the side of the Naderites for a change.

But the reason for Mr. Miller's unaccustomed territorial sensitivity is not very mysterious. If the FTC were to lose power over the professions, they would be left to the exclusive control of state authorities. In principle this would not be a bad idea. But it happens that the history of state con-

trol over the professions has been largely a story of protectionism. Time and again professionals have been able to use the cloak of state authority, with its licensing requirements and codes of behavior, to restrict competition and keep others out of their lucrative trades.

The FTC has been moving against this kind of restrictiveness, and has acted to open up the legal, dental and medical fields to advertising by practitioners. Returning jurisdiction to the states would kill the movement.

In general, it's a good idea to keep the federal government out of things; generally, more power to the FTC has meant more punitive and unnecessary regulation. But this time the commission is on the side of the markets. And it bears repeating that the purpose of deregulation is to let the market in, not simply to switch regulatory functions from one jurisdictional box to another.

In fact we should keep this point in mind during the debates to come over all the current "new federalism" initiatives: A lot of what is going to be walking around disguised as decentralization or deregulation just may, when you take a closer look, turn out to be just the same old protectionism underneath.

## Editorials

*In God we trust*

## *How things work*

There's a modest lesson to be learned in the Federal Trade Commission's attempts to retain its jurisdiction over professionals. This lesson will demonstrate how things work in our nation's capital.

Bills to reauthorize the FTC are currently in the House and Senate Commerce Committees. The legislation is designed to renew the agency's functions. But, in the name of so-called deregulation, some elements of Congress are seeking exemption for professionals from FTC regulations. The professionals include optometrists, dentists, doctors and lawyers.

There are 181 House co-sponsors of the bill to exempt professionals. It just so happens that 98 percent, or 155, of the co-sponsors have received a total of \$800,000 in campaign contributions from the American Medical Association, the American Dental Association and the American Optometric Association.

Three Kansas congressmen who are co-sponsors of this legislation have received contributions from these organizations. Rep. Jim Jeffries has received \$6,250; Rep. Pat Roberts, \$15,700; and Rep. Robert Whittaker, \$16,350.

Aside from the persuasive influence the professional organizations seem able to exert, the law to exempt professionals from oversight is bad legislation, opposed even by the Reagan administration.

In 1978, the FTC successfully overruled a prohibition on advertisements for eyeglasses and contact lenses. Since then, the price of contact lenses has dropped 25 percent. The cost of eyeglasses has increased less than the rate of inflation.

Similarly, the FTC has challenged the ban on advertising by dentists and doctors. The aim is to encourage competition and bring the cost of these services down.

The professional groups don't want regulation, and for good reason. They don't want to be objects of FTC watchdogs.

Though the professionals may argue that state agencies can move in to fill FTC functions, the sad fact is that state authorities have been reluctant to do so. According to the Wall Street Journal, "Time and again professionals have been able to use the cloak of state authority, with its licensing requirements and codes of behavior, to restrict competition and keep others out of their lucrative trades."

The FTC efforts to open up these professions and invite competition may be seeing their last days if congressmen approve an exemption for professionals. The strong support for the exemption and the FTC's apparently futile attempts to retain its authority demonstrate once again that the power of the purse reigns in Washington.

*International*  
New York City

NEWSDAY  
LONG ISLAND, N. Y.  
E-460,000 - 570,000

MAY-18-82

## Don't Tie the FTC's Hands Again

When Long Island doctors boycotted patients whose bills were being paid by the workers' compensation system, New York State took them to court — and lost.

The doctors said they had a right to refuse to treat patients as a protest against fixed state medical payments that they claimed were too small. A grand jury thought their boycott violated state antitrust laws, but a judge ruled that those laws didn't apply to the professions.

This case obviously involved important social questions bearing on the cost of health care. Despite a recent decline in the national rate of inflation, medical costs are still rising at a double-digit pace.

When it comes to social regulation, New York is a progressive state; many others are far more protective of the people they're supposed to regulate. So the federal government, which has developed a body of laws dealing with anticompetitive practices in the professions, shouldn't pull back from enforcing them. Yet a Senate committee has approved a bill that would prevent the Federal Trade Commission from enforcing antitrust laws against professionals. That ban would include doctors, dentists, optometrists and others; the bill is vague on how far it would extend.

This is being done in the name of deregulation. The states already control the professions, the argument goes, so why should Washington get into the act?

While it's true that the states license doctors, dentists, lawyers and the like, a state's ability to deal with anticompetitive practices is limited; witness the outcome of the New York case. And where states actually *mandate* practices that are anticompetitive, professionals could be protected by standard antitrust-law limitations, leaving the FTC free to attack the state rules under federal consumer protection laws.

When federal policymakers are searching for new ways to make health care and health insurance more competitive, why is Congress trying to junk a perfectly good tool Washington already has? Perhaps because of the medical professions' generosity: In the past two years, it has given \$800,000 in campaign contributions to House co-sponsors of this bill.

We're pleased that Rep. Norman Lent (R-East Rockaway), who may have the swing vote on the House subcommittee considering the ban, plans to oppose it. We hope other subcommittee members, and eventually the whole Congress, see the wisdom of treating anticompetitive practices in the professions like those in other businesses.

MAY 13 82

Philadelphia Daily News  
PHILA, PA  
PL-267391

## Deregulation

Deregulation sounded different when it was a campaign promise. In practice, it's turning out to be little better than a license to return to some time-honored ways to cheat people.

The Senate Commerce Committee this week voted overwhelmingly to bar the Federal Trade Commission from taking antitrust action against professional groups. That means that businesses are (at least for the time being) still required not to do things like fix prices or advertise deceptively. Doctors and lawyers, however, would be able to cheat as much as they like as long as they do it in groups.

For example, it would be perfectly all right for a medical association to set fixed fees for doctors to charge or bar physicians from giving prescriptions to their patients so they can shop for the best price. In fact, even outright fraud would not be something that the FTC would be allowed to challenge.

Congress seems here to be creating a special kind of aristocratic privilege by exempting an entire class of people from the law.

There is a reason for all this, although it's not the one the "deregulators" are giving. The market for doctors and lawyers these days isn't as bullish as it has been. What better way to keep income levels high than to keep everything within the club? Competition would be so untidy, after all, and a bad doctor who charges high fees might lose patients.

Being a "professional" is not a guarantee against greed or dishonesty. The public would have to take what it could get.

The American Medical Association, naturally, believes that FTC regulation lowers the quality of medical care. Apparently the AMA believes that doctors don't do good work if they're not allowed to fix prices and defraud patients.

The AMA, as usual, is looking out for its own pocketbook. It stopped blathering about "socialized medicine" when Medicare proved to be a spectacular windfall for many of its members. AMA principle is a matter of cash flow.

The "professionals" aren't alone in their distaste for the FTC. The agency has been under sustained attack for the past four years by business and professional groups who'd like to go back to the good old days of no holds barred in dealing with the public.

But the fact is that we're all the public — even "professionals." It's in everyone's best interest to enforce the laws against cheating us. Even the administration, despite its own interest in deregulation, opposes exempting a whole class of people from the law.

It's bad deregulation, bad law and bad news for the public. Congresspeople who vote for it when it hits the floor might just as well pick everybody's pockets.

## Deregulation we don't need

There are times when regulation is necessary to maintain free enterprise. That sounds contradictory, but it isn't. There is a bill in Congress to remove Federal Trade Commission jurisdiction over professions that already are regulated at the state level. The bill, however, is opposed not only by the FTC's chairman, a champion of deregulation, but by the Reagan administration, the avid pusher of deregulation.

It is well that there is such high powered opposition, and from staunch deregulators, too. Removing federal regulation over the professions, such as doctors, dentists, lawyers, etc. and leaving the regulation up to the states would most likely result in less competition rather than more. The state boards that regulate professions are frequently heavily influenced by the professions they regulate.

The hassle the Texas Sunset Commission and the Legislature went through last year over the reconstitution of the Texas State Board of Medical Examiners is evidence of the hold that the medical profession has over that board. The Texas Medical Association fought proposed changes in the board so vigorously that the Legislature did not approve renewal of the board in its regular session and had to deal with renewal in a special session later in the year.

The TMA lobbied so effectively that the Sunset Commission made no recommendation to the Legislature on the medical board. The Sunset Commission usually recommends to the Legislature after review of each agency whether the agency should be continued or abolished and specific changes in the agency. It made recommendations on all but three of the 28 agencies it reviewed before the last legislative session. The other two on which it made no recommendations also dealt the medical profession.

The TMA lobbied successfully to defeat proposed changes in the Medical Practice Act that would have permitted nurses to perform some medical duties under certain circumstances, such as to prescribe medications. The medical profession also was successful in eliminating from the act a curb on the state board's power to interfere with physician advertising.

The FTC has been opening up the professions — legal, medical, etc. — to advertising in order to promote competition in those fields.

State regulating agencies in which the professions exercise strong influence if not control have a tendency to stifle competition rather than foster it. It is well that the FTC keeps a hand in the regulation of the professions — for the good of the consumer.

STAR - LEDGER

NEWARK, NJ

PH - 417,000 S - 575,000

## *The wrong Rx*

A strong special interest group made up of doctors, dentists and other high-income professionals has launched a well-financed drive in Congress to remove the jurisdiction the Federal Trade Commission (FTC) holds over these groups.

On the surface, this would appear to be consistent with the deregulation movement instituted under former President Carter and given continued support by President Reagan with his commitment to get the government off the people's backs.

In this instance, however, the Reagan Administration is opposed to ending the FTC authority over the trade practices of these professions. The agency's chairman, James C. Miller 3d, testified against a congressional bill that would strip the FTC powers in these professional sectors.

Mr. Miller's "unalterable" opposition to the proposed deregulatory legislation was based on an understandable concern of a less vigilant regulatory control if these powers were left to the exclusive jurisdiction of state authorities.

Historically, the experience with state regulatory agencies is that they have been less rigorous than their federal counterpart, the FTC, on licensing requirements, codes of behavior and other measures that serve to restrict competition in these lucrative fields.

The FTC has moved in the other direction in an effort to remove anti-consumer restrictions. The agency has acted to open up the legal, medical and dental professions to the competition of a free marketplace. If this authority were given exclusively to state agencies, the competitive element would be aborted, killed off.

Deregulation is designed to open markets. That principle would be circumvented in this case by transferring jurisdiction from one government level to another — one more amenable to the professions involved.

*International*  
New York City

COURANT  
HARTFORD, CONN.  
M-200,000 . . . 200,000

MAY-15-82

## Doctoring Federal Deregulation

The Senate Commerce Committee recently approved a bill that, in the name of deregulation, would actually encourage protectionism and limit competition.

The bill would eliminate state-regulated professionals — such as doctors — from the Federal Trade Commission's jurisdiction. It would also wipe out the FTC's purview over "unfair" advertising, and cut the agency's budget from \$68 million to \$54.6 million by 1985.

If passed, this measure would undermine FTC's fight to eliminate restrictions, often codified into state law, that prevent professionals from engaging in basic competitive practices, such as advertising.

Too many state boards designed to oversee professionals are controlled by the professionals themselves. Even if they weren't, nationwide standards make sense in this area so states don't have to compete for doctors, for example, by relaxing their standards.

The Supreme Court recently upheld the FTC's order allowing ads and non-traditional business arrangements, affecting doctors, optometrists and dentists, among others.

The agency has also prevented doctors from refusing to treat Medicaid and emergency room patients and from refusing to work in hospitals with other doctors employed by health maintenance organizations.

Opposition to this bill comes from across the political terrain, including FTC chairman James C. Miller. But some of the most influential groups in politics want the FTC out of the picture, including the American Medical Association, the American Dental Association, and the American Optometric Association.

Each is a major campaign contributor.

Senators should have an excellent opportunity to demonstrate their independence and support of consumer interests by voting against this proposal.

*International*  
New York City

POST-HERALD  
BIRMINGHAM, ALA.  
K-75,000

MAR 17-82

## Latest example

The relationship between large campaign contributions and an individual congressman's support of legislation favored by the contributors has long been plain to anybody who cared to look. And as campaign costs have escalated, the relationship has become even clearer.

The latest example, as have many previous ones, involves political action committees (PACs) representing various medical groups and a bill to exempt professionals from investigation or prosecution by the Federal Trade Commission. The 155 co-sponsors of the legislation have received a total of \$831,960 from PACs of the American Dental Association, the American Medical Association and the American Optometric Association, according to Ralph Nader's Congress-Watch organization.

The second highest recipient was Rep. Richard Shelby of Alabama, who received \$18,500.

Shelby has not had a serious political challenge since he won the Democratic runoff in 1978 — the first time he sought the Seventh District seat — and there are no indications that he will have strong opposition this year. Some of the contributions — made in 1979, 1980 and 1981 — went to pay off his 1978 debts. But he doesn't really need the funds.

That fact, however, seldom enters into the contributors' decisions. If anything, they prefer to contribute to incumbent congressmen they know will be around for awhile and in positions to help their causes. Shelby happens to be a member of a House subcommittee on health.

There is nothing illegal under current law about the contributions. But the strong correlation between where money goes and the legislative actions of recipients doesn't do much for public confidence in Congress' dedication to the public interest.

## EDITORIALS

# *Physicians' ads: a good medicine*

It won't set a precedent, but the Supreme Court's 4-4 vote on the issue of advertising by doctors and dentists advances the cause of consumerism and allows physicians and dentists more freedom to conduct their practices as they see fit.

The court's decision upheld a Federal Trade Commission order which instructed the American Medical Association to lift some of its restrictions on medical advertising. The order says physicians must be allowed to advertise, compete for business and enter into non-traditional financial arrangements. Dentists are bound to the advertising portion of the order.

The abstention of Justice Harry A. Blackmun caused the tie, and it means the AMA could challenge the FTC again. But for now, the FTC order stands. Consumers and doctors both could benefit.

One advantage for doctors comes to mind immediately. Those who are beginning their practices will be able to use advertising to make themselves known. Advertising also could effectively point out physicians and dentists who are overpriced. The Supreme Court says the AMA would still have control over deceptive advertisers, and active prosecution of these people could correct a problem the AMA anticipates.

From a consumer standpoint, too, the advantages are obvious. The biggest one is helping to control the rising cost of medical care.

The AMA's standards of conduct for its members are necessarily high. But its close-to-the-vest approach to the medical profession sometimes separates doctors from the public they serve and, in some cases, has shielded less competent members of its ranks from public scrutiny. Advertising could promote more honesty, which can only benefit doctors with nothing to hide and consumers seeking their money's worth.

Lewiston, ID  
Tribune  
(Cir. D. 24,691)  
(Cir. S. 24,892)

MAY 14 1982

# Another Senate blow to the Consumers

If there was ever any doubt that the U.S. Senate, as currently constituted, is an enemy of the consumer, then consider the way the Senate Commerce Committee rushed this past week to lick the boots of practically everyone who is eager to take commercial advantage of the public.

The committee voted 11 to 3 to bar the ~~Federal Trade Commission~~ from taking any anti-trust actions against medical associations and others that fix prices. The committee also voted to curb the FTC's powers to regulate unfair advertising.

In other words, let the buyer beware. Never give the suckers an even break.

What is wrong with regulating unfair advertising, with requiring the nation's businesses to tell people the truth about the products they would sell them? What's wrong with giving people fair warning?

And price fixing in any realm — especially one as essential as medicine — is not only detrimental to the consumer but to that free enterprise system which is so frequently advocated by members of the medical community. With price fixing, the cost of medicine bears no relationship to the value of the service rendered. It is related solely to what the price-fixing doctors think the traffic will bear.

The FTC stands ready to check such abuses.

And the U.S. Senate — bought and paid for by many of those the FTC would keep under control — is apparently ready to check the FTC. It's the Senate's way of saying thank you for all those contributions.

But there is no price fixing on the purchase of senators. Some of them will sell out more reasonably than others. — B.H.

MAR 21 62

SUNDAY TIMES

CUMBERLAND, MD

S-33,441

## Professional Organizations Eying Congressional Move

An effort is under way in Congress to enact law which would exempt professionals from Federal Trade Commission investigation or prosecution. The move appears to reflect professional groups' dismay at FTC actions in recent years. These notably include an agency decision that the American Medical Association's curbs on advertising by doctors are unlawful.

The professional organizations naturally have a keen interest in securing passage of the legislation introduced in the House by Reps. Thomas Luken of Ohio and Gary Lee of New York. This would serve their interest. One cannot take exception to their lobbying for passage.

Questions are raised, however, by the disclosures of Congress Watch about heavy contributions to members of Congress who have since backed the proposal. According to this watchdog organization, these campaign gifts totaled more than \$800,000. It is said that nearly \$300,000 went to members of congressional committees which will consider the legislation. It would seem that another chapter should be written in the electoral reforms story.

## *Doctors, Lawyers and the FTC*

**T**HE FTC has been taking it on the chin. In a single month, Congress has vetoed a proposed regulation on disclosures about used cars and the Senate Commerce Committee has come up with a series of controversial amendments that may kill the commission's whole authorization bill. One of these amendments would exempt state-licensed professionals from FTC regulation directed against anti-competitive activities such as price-fixing and boycotts. Thus, doctors and lawyers, for example, would continue to be regulated—or not regulated—by the states.

This is a terrible idea. For years, professional associations were thought to be exempt from the anti-trust laws. The change came in 1975 when the Supreme Court held that minimum-fee schedules enforced by the bar amount to illegal price-fixing. Two years later, the court said that prohibitions against advertising could not be enforced by professional associations. And only last March the Supreme Court upheld an FTC order allowing doctors and dentists to advertise and preventing the American Medical Association from penalizing physicians who work for health maintenance organizations or other prepaid plans instead of on a fee-for-service basis.

States may very well be the proper authorities for determining professional qualifications. State regulators assess competence and educational standards, and they license professionals. But the economic activity of professionals is commerce in the true sense of the word. Price-fixing, deceptive advertising and anti-competitive agreements hurt consumers

whether practiced by automobile manufacturers or the local medical establishment.

And the magnitude of that economic activity is not to be sneezed at. General Motors, for example, spends more on health care for its employees than it does on purchases from its largest supplier, U.S. Steel. Some states supervise this activity well, within their own borders; some hardly pay attention at all. If the FTC is pushed out of the picture, there will be no comprehensive, national regulation of this commerce unless the Justice Department's jurisdiction is expanded and its budget substantially increased. That's an impractical solution that is not even supported by the department.

James Miller, who was appointed by President Reagan to be chairman of the FTC, opposes the Commerce Committee's exemption for the professions. He believes that the commission has done useful work in this area that has promoted competition, brought down some prices and served to benefit the consumer. Commission cases have challenged price-fixing agreements among doctors and opposed concerted efforts by physicians to force increases in Medicaid fees and to kill cost-containment programs organized by insurers and unions. The agency has stopped illegal kickbacks by physicians to medical laboratories and opposed organized boycotts designed to coerce local hospitals. FTC actions on eye-glass advertising and generic drugs have saved consumers millions of dollars.

This is just the kind of protection American consumers rightly expect the FTC to provide.

## Laws for Sale

Abscam-style bribery that buys legislation outright may be the exception in Congress. But the evidence grows that perfectly legal campaign contributions are having the same effect. Special interests are buying laws they like. It's hard to find a clearer example than the present effort of professionals to gain exemption from scrutiny by the Federal Trade Commission.

House and Senate committees are now drafting legislation to restrict the commission's authority in different ways. That is not all bad. For example, the commission's chairman, James Miller, wants Congress to narrow the F.T.C.'s power to regulate "unfair" advertising. The limit he proposes is probably too stringent, but the idea itself is defensible. That is not the case, however, with the attack on the F.T.C.'s jurisdiction over physicians, dentists, optometrists and other professionals.

This jurisdiction has been well used. Four years ago the commission ruled that state laws and trade association agreements that restrict advertising for eyeglasses were illegal under Federal law. Such advertising has since become common and has made it possible for consumers to save millions of dollars through easy comparison shopping.

In 1979, as part of a broader investigation of the American Medical Association, the commission ended similar restrictions on advertising by physicians. It also forced the A.M.A. to drop its opposition to doctors who work for salaries instead of fees in hospitals and prohibited physicians' groups from boycotting cost-cutting health maintenance organizations. Other prime targets for investigation include restrictions on services that may be provided

by dental hygienists; pressure to sell "brand-name" prescription drugs, and deceptive advertising by weight-loss clinics.

Now the professional trade groups are striking back. Several senators are sponsoring bills to block commission action against state-licensed professionals, from architects to veterinarians. A similar House bill, with 160 co-sponsors, is only slightly less inclusive. These bills are rationalized as a matter of states' rights: if states set standards for professional skills, it is said, they should also set the standards of professional conduct.

But that is not the view of even conservatives at the White House or the commission. They understand the difference between deciding whether a dentist knows how to fix teeth and whether he or she should be permitted to do so in a department store. They also understand that state legislators are notorious patsies for professional lobbies. As a practical matter, only the F.T.C. has the independence and expertise to police the economic conduct of professionals.

Why, then, the enthusiasm in Congress for curbing the F.T.C.? To Congress Watch, a group that monitors campaign contributions, the answer seems obvious. Over the last three years, 155 of the House co-sponsors received campaign contributions of \$599,000 from the A.M.A., \$191,000 from the dental association and \$41,000 from optometrists.

Finished bills from the Senate and House commerce committees are due soon. Then the country will learn which counts more among their members: conscience or cash.

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## Bad Medicine

Not content with the bad press that it received for selling out to used-car dealers last month, Congress is now turning to doctors with its legislative largesse. It is considering exempting them, at their well-financed request, from antitrust enforcement efforts of the Federal Trade Commission. Such an exemption not only would be harmful to efforts to hold the line on health costs, but it also runs counter to the notion that the marketplace should be the ultimate price regulator. If passed, this legislation would foster even more cynicism about who controls Congress.

For some years, the trade commission has been studying the effect that various professional associations' bans on advertising have had on the price of health care. In 1978, it ruled that such bans on advertising of eyeglasses and contact lenses were unlawful. The commission says that consumers saved more than \$100 million in 1980 because of the resulting price competition.

In 1979, the commission issued a similar ruling forbidding the American Medical Assn. from interfering with advertising by its members. The doctors appealed and lost when the U.S. Supreme Court had a tie vote on the case, leaving the rule intact.

Even before the court verdict, though, the doctors had turned to Congress. Reps. Thomas A. Luken (D-Ohio) and Gary A. Lee (R-N.Y.) are sponsoring legislation that would exempt doctors, dentists, optometrists and others in the so-called "learned professions" from this antitrust enforcement. According to Congress Watch, a consumer-advocacy group, 155 of the co-sponsors of this legislation in the House—that is, virtually all of them—received a total of \$831,960 in campaign contributions from the doctors', dentists' and optometrists' associations.

The House Commerce Committee will consider this exemption later this month. The committee has 42 members, 39 of whom received a total of \$198,660 in medical association contributions, Congress Watch said.

The doctors argue that their restrictive advertising codes have been dropped. The commission counters that practices that block competition have not in fact stopped, pointing to a case earlier this year in Fort Lauderdale, Fla., in which the local medical association was trying to get doctors not to advertise their professional experience or their willingness to accept credit cards or Medicare payments. A commission official says that, despite what the doctors say, the agency still has a full docket of restraint-of-trade cases involving the health-care field.

The doctors cannot mask their lobbying as regulatory reform. That would be seen through by the Federal Trade Commission chairman, James C. Miller, a Reagan appointee who was formerly the executive director of the presidential task force on regulatory relief. Miller thinks that the professionals' self-imposed restrictions, such as restraints on who can practice where or advertise what services, interfere with the free play of market forces.

And he does not think that federal enforcement adds a layer of needless bureaucratic regulation over state rules already in place, as the doctors say. The states and the federal government regulate different aspects of medicine. Miller says, with the former looking more at qualifications while the federal government handles business practices.

In short and from all perspectives, the exemption of professionals from antitrust enforcement is bad medicine for consumers. It is one prescription that Congress should tear up immediately.

*International*  
New York City

POST-HERALD  
BIRMINGHAM, ALA.  
B-75,000

*International*  
New York City

PRESS SCIMITAR  
MEMPHIS, TENN.  
E-125,000

COMM. INTL. P.C.C.  
C/O BUREAU OF  
1111 14TH ST. N.W.

MAY-15-62

MAY-14-62

## Cutting the FTC

Do we want a privileged class of professionals in this country that could engage in price-fixing and other anti-competitive acts and be immune from scrutiny by the Federal Trade Commission?

Obviously not. But that is what we could get if a bill pushed by doctors, dentists, lawyers, engineers, architects, accountants and other professionals is passed by Congress.

In recent years the FTC has been probing price-fixing, boycotts, restrictions on advertising, fraud and deception and other practices by professional bodies that artificially raise prices.

Naturally the professionals resent such moves and have been fighting back. Political action committees for doctors, dentists and optometrists alone contributed almost \$300,000 during the last three years to members of the House and Senate committees with jurisdiction over the FTC.

It seems to have been money well spent. The other day the Senate Commerce Committee voted 10 to 5 to exempt professionals from the FTC's

unwelcome attention. The purported reason was that they are already "state-licensed."

That reasoning is specious. Most state professional boards are dominated by the persons they are supposed to regulate, and most put the financial interest of the professions above the public's interest in heightened competition.

FTC Commissioner Michael Perichuk angrily but perhaps accurately called the committee vote "a tribute to the naked political power" of the American Medical Association and the American Bar Association.

While they were at it, committee members ordered the FTC to stop looking into unfair advertising. That provision was backed by friends of the tobacco industry, raising fears that the FTC could no longer require health warnings in cigarette advertising.

The bill is expected to pass the full Senate and face a fight in the House. There we will learn which will prevail: campaign contributions or the common good.

MAY-13-82

## Deregulation

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For example, it would be perfectly all right for a medical association to set fixed fees for doctors to charge or bar physicians from giving prescriptions to their patients so they can shop for the best price. In fact, even outright fraud would not be something that the FTC would be allowed to challenge.

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The "professionals" aren't alone in their distaste for the FTC. The agency has been under sustained attack for the past four years by business and professional groups who'd like to go back to the good old days of no holds barred in dealing with the public.

But the fact is that we're all the public — even "professionals." It's in everyone's best interest to enforce the laws against cheating us. Even the administration, despite its own interest in deregulation, opposes exempting a whole class of people from the law.

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JUN-13-82

## Regulating the professions

A move is under way to sharply limit the Federal Trade Commission's authority over the trade practices of professions that are already regulated at the state level. This is being done in the name of deregulation.

Removing some of the regulations that bind the nation's industries and professions has in several instances proven to be a boon for both business and the public. But the move for deregulation can go too far. Indeed, many of the rules governing the behavior of the nation's economic actors are unquestionably needed. That is certainly the case, we believe, when it comes to regulating the trade practices of the professions.

If the FTC were to be shorn of its power to monitor the behavior of these groups, as has been proposed, only the states would be left to see to it that their trade practices were conducted in the public interest. Ordinarily, that would be a good thing.

But experience shows that when it comes to the professions the states do much less regulating than they do protecting. The states all too often serve those they are supposed to regulate by either limiting the number of persons that could enter a particular field, limiting advertising in order to protect the established practices and keep prices up, and helping to divide up "territory" for the members of the profession. The states, in short, are inclined to act as benefactor and protector of the professions, and leave the regulatory functions up to the professions themselves.

The inadequacy of such self-policing has been demonstrated time and time again. One study by the FTC of optometrists and opticians, for example, found that self-regulatory practices limited the area in which professionals could practice. It also found that because of restrictive rules, regulations and statutes, the price of ophthalmic goods and services had markedly increased.

Nor are the professions, in many cases, any better at regulating and remedying the problems associated with incompetence or malpractice. In a series published in this newspaper last year, we showed how the state system for monitoring the conduct of physicians embodied all the worst elements of bureaucracy and self-policing. The series disclosed both that few incompetent physicians were ever disciplined by the state body and that the entire system for doing so was so shrouded in secrecy that the patients had no real way of knowing whether serious charges had been brought against a physician. The series also found even doctors who had committed extraordinary breaches of professional misconduct or who had actually harmed patients through incompetent or malicious treatment were permitted to continue their practice unimpeded for years.

But in many cases where the states now fail, the FTC might not. In recent years, the FTC has been waging a strong war against those rules and regulations of the professions that are protectionist in nature. It has moved against restrictions in competition, and has attempted to open up the legal, dental and medical fields to advertising by the professionals. The FTC has likewise expressed concern with the proposed fee schedules adopted by the American Medical Association and with the boycotts by physicians of hospitals and health care programs.

Depriving this federal regulatory body of the power to oversee and investigate the practices of the professions will mean protectionism to an even greater degree than we now have. The public cannot afford it.

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JUN-1--82

## Doctors, lawyers and the FTC

Over the opposition of Chairman Robert Packwood and four other members, the Senate Commerce Committee has voted to exempt medical, legal and other professional groups from federal fair trade and anti-trust laws.

Unfortunately the full Senate is all too likely to pass the measure intact. It would bar the Federal Trade Commission from prosecuting individuals and organizations for fraudulent and deceptive advertising, price fixing and conspiracies to boycott. Some experts predict that enactment of the measure could lead to removal of the health warning on cigarette packages because the FTC would lose its jurisdiction over such health matters.

Instead, it would be left to state governments to regulate these matters, however and if ever they might choose.

This action was not taken as part of the Reagan administration's drive to reform the federal regulatory burden. Mr. Reagan's handpicked FTC chairman, James Miller, hired away from the conservative American Enterprise Institute, vigorously opposes the Senate move. "It is very bad," he said after the committee's 10 to 5 vote, "to establish a privileged class and make it exempt from enforcement that everyone else is subject to."

The argument that state agencies can better perform this regulatory role is nonsense. For one thing, state agencies tend to be weak, underfinanced and dominated by the powerful professional groups they're supposed to regulate.

What's more important, fraudulent advertising

and price fixing are problems that are national in scope. That is why the federal fair trade practice and anti-trust statutes were passed in the first place. The exemption from anti-trust laws that doctors, lawyers and other professionals long claimed has been rejected by a number of courts. This trend has been especially pronounced since the government assumed responsibility for medical bills under Medicare and Medicaid, which has helped to push medical costs through the ceiling. In fairness, these professions have no more reason to be exempt from anti-trust laws than from income tax or civil rights laws.

It's easy and no doubt partly accurate to blame the committee vote on the generous campaign contributions made in 1980 by professional associations of doctors or lawyers. Coming so close to the House's veto of an FTC rule tightening the regulations on used car dealers—again after generous campaign contributions from the used car industry—it suggests that Congress can too easily be bought. In fairness to Congress, though, the House was right on the used car vote.

Nor can one always assume that a congressman's position is determined by contributions; more often it's probably the reverse. And sometimes contributions are in vain. Sen. Packwood, for example, was a beneficiary of this largess but stood up for what was right anyway.

If cash or misguidance prove sufficient to get this nasty little measure all the way through Congress, Mr. Reagan will have good reason to use his veto. His policy on this issue is right, and the FTC deserves his support.

# Let the F.T.C. Be a Check on the Doctors

**W**E are all aware of the beneficial effects of professional licensing boards and medical associations that protect consumers from quackery and charlatans. But we are not so aware that these same associations are actually being used to establish cartels for their members. And such cartels are convenient vehicles for setting higher fees on many kinds of health and other professional services.

Congress will have to address this contradiction in a pending authorization bill that would drastically curtail the Federal Trade Commission's authority as policeman of these professional associations. Currently, the F.T.C. is able to bring actions against licensing boards and medical associations that violate the Sherman Antitrust Act, prohibiting conspiracies in restraint of trade.

Not surprisingly, medical and other lobbies that favor clipping the F.T.C.'s wings argue that the agency has been harassing morticians, optometrists and even doctors and dentists by over-regulating their licensing procedures and activities.

On the other hand, more public-minded economists favor continuation of the F.T.C.'s strong regulatory authority, and they include those usually noted for objecting to excess regulation. Their position is that while the morticians and surgeons control entry into their professions to protect consumers against quackery, there have also been many instances of misuse of their licensing power to restrict entry and thus make profits greater for current members. In this case, the economist is correct in opposing a reduction in the F.T.C.'s power.

Consider the case in principle for totally free entry into these professions, which in practice almost no one supports. Any practitioner could use the title of mortician, lawyer or dentist just as anyone can now use the title of economist. Those who are poorly trained or prone to mistakes would lose patronage as their performance became known. Others would improve their skills by practice and their market shares would increase. Eventually the incomes of quacks or incompe-

tents would fall to the point where they would be forced to close and perhaps go into teaching or consulting.

This is not, however, a very compelling argument for total deregulation in present day circumstances. Before market forces expelled the untalented, they might well have done considerable harm, both financially and by raising the mortality rate.

By requiring practitioners to be licensed, so as to eliminate those that are incompetent, even the first mistakes that lose patients could theoretically be prevented. Public regulation through licensing can correct the serious problems created by lack of knowledge in the market. But do not be too quick to embrace total regulation. In practice, the licensing board can apply the wrong test or biased review procedures that produce even worse overall results.

While the system works to keep the quacks out, it also can be used to keep legitimate competitors from offering cheaper and more abundant health care, and it is obviously in the self-interest of just such a professional association, though never spoken, to use the limitation on entry in order to keep fees at monopoly pricing levels.

The problem is that licensing to remove quackery can also be used as a convenient excuse to raise the required level of service quality too high. More years of training, more equipment and longer apprenticeships could be required by the licensing professional association. These would be costly steps, and would thus be the basis for raising fees, greatly benefiting those already in practice.

**S**UCH a conflict of interest often occurs when a licensing board confronts someone trying to introduce no-frills service, versus the regular full-line service. Full-line has less potential for harmful effects on quality but also carries higher prices and profits. Such a tendency to charge too much for full-line can only be checked by a shift to no-frills service by large numbers of consumers. And the licensing board, by banning no-frills service in the name of enhancing health care, is not being entirely hon-

est. Its actual aim is to maintain and increase the profits to its members.

There have been several examples of this in recent years. One was brought to light in a 1979 F.T.C. investigation of morticians, who were requiring consumers to buy coffins as a condition for cremation, thus raising prices to unjustifiable levels by their self-licensing activities. The victim is the consumer, required to pay for more than he needs.

But the most questionable self-regulation centers on direct control of professional fees. The setting of a schedule of fees for service so as to discriminate between higher charges for high-income consumers and lower charges for others is the key to the use of monopoly power by any professional association.

To maintain such a schedule it is necessary to prevent fee advertising so that the wealthy do not perceive that they are being overcharged. Also, it is important to prevent the development of services not on a fee basis, such as prepaid medical or dental care, since it is impossible to determine from such arrangements whether fees are being cut in violation of the schedule.

Fee setting is a long way from state board licensing to solve quackery problems. Can we have one without the other? The Federal Trade Commission has operated in recent years to allow self-regulation, but to prevent conspiracy to set monopoly professional fee levels. Agency cases have dealt with fee fixing by the Michigan State Medical Society, and boycotts against health insurance cost containment programs by the Indiana Federation of Dentists.

Another example was the F.T.C.'s rule requiring eye doctors to give copies of eyeglass prescriptions to all patients. Before this rule, many optometrists required that patients had to buy the glasses from them after the examination. Now, the patient, with prescription in hand, can shop around for the cheapest source of glasses. The banned practices may have had some uplifting effect on service quality, but they seem mostly to have been for the purpose of putting more money in optometrists' pockets.

On the whole, the F.T.C.'s operations have dealt with the monopolizing activities of the professional associations. These activities have been more widespread than might be expected, and have contributed to higher costs of medical, dental, mortician and other services for more than 100 occupations. The objections to F.T.C. practices have come from the professional associations themselves, not from economists concerned with the quality and price of professional services.

If the morticians and dentists pressure Congress to limit these antitrust activities, we will all pay more for the same fillings, eyeglasses and appendectomies.

*Paul W. MacAvoy, Frederick William Bènecke Professor of Economics at Yale University, is one of four economists who regularly write for the Sunday Business section.*

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## Are professionals above the law?

Doctors, dentists, optometrists and other professionals are misusing the concept of deregulation to try to keep the Federal Trade Commission from keeping them honest.

The FTC does not, of course, tell doctors how to practice medicine or dentists how much to charge their clients. But it has attempted to stop them from fixing prices and restraining competition through boycotts, advertising bans and deceptive trade methods.

For example, it ruled in 1978 that it was illegal for optometrists' groups to prohibit advertising of eyeglasses and contact lenses. As a result, the price of contact lenses has dropped and the cost of eyeglasses has risen at only half the inflation rate.

It also has sued to prevent doctors and dentists from boycotting insurance programs and health maintenance organizations designed to contain medical costs. It stopped the only five doctors in a small Texas town from boycotting the emergency room of the local hospital in an effort to keep the hospital from hiring its own staff physician.

But professionals think they, alone among business people, should be immune from federal laws requiring them to play fair with their customers, so they've introduced legisla-

tion in Congress to exempt themselves from FTC oversight.

This was too much even for FTC Chairman James C. Miller III, a Reagan appointee who generally wants his agency to enforce market competition less energetically. The bill, he said, "sets aside the privileged class in this country . . . from laws and enforcement efforts that govern everyone-else's behavior."

Still, the bill has passed the Senate Commerce Committee by a big margin. Another version is very much alive in the House, where it has 161 co-sponsors.

That should surprise no one who considers that trade groups of physicians, dentists and optometrists have contributed \$863,810 to co-sponsors of their bill, according to a public interest group called Congress Watch.

Theoretically, those professions still would be regulated by the states if federal oversight ceased. But most state regulatory agencies, including Illinois', are firmly controlled by the professions they regulate. And many anti-competitive practices (the ban on advertising by doctors, for example) are national in scope. If this bill passes, it will remove an important control on the skyrocketing cost of health care. The nation cannot afford that.

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JUN-15-82

## Special-Interest Law

The Senate Commerce Committee has passed a piece of special-interest legislation that would exempt medical, legal and other professional groups from federal anti-trust laws. This would mean that members of such groups could not be prosecuted under federal law for deceptive advertising, price-fixing or other violations of the fair trade and anti-trust laws.

The legislation is favored by professional associations, which claim that these matters would be better left to state authorities, but there is no good reason why these groups should be given special preference over other sectors of society. Under the relaxation of federal regulations in recent years, doctors, lawyers and other professional persons are allowed to advertise. Surely, however, their advertising and other business prac-

tices should come under the same Federal Trade Commission regulations as other public enterprises.

To its credit, the Reagan administration is opposing this legislation. President Reagan has been in the forefront of moves to "get government off our backs" and has succeeded in relaxing many needless federal restraints on productive business and industry. But Mr. Reagan's FTC chairman, James Miller, rightly criticizes the proposed professional exemption. "It is very bad," he said, "to establish a privileged class and make it exempt from enforcement that everyone else is subject to."

Unfortunately, the legislation appears likely to be approved by the full Senate. President Reagan would be justified in vetoing it if the House also accepts this special-interest measure.

## Doctors, lawyers, and antitrust

By Earl W. Kintner

The Federal Trade Commission, already hit with Congress's veto of its defects-disclosure proposal for used cars, is engaged in yet another legislative battle on Capitol Hill. This time the fight is in the Senate, where a bill restricting the commission's authority to prosecute or even investigate alleged or suspected abuses among a wide range of professional groups is gaining momentum.

As recently passed by the Senate Commerce Committee, the bill would exempt many state-licensed professions — such as doctors, dentists, lawyers, and engineers — from FTC jurisdiction altogether.

Clearly, the rollback of the commission's traditional authority in this area constitutes piecemeal and arbitrary antitrust legislation. Congress should either exempt professionals from all the antitrust laws on the books, not merely the FTC Act, or stand pat.

The FTC has become an easy target these days. Ever since the agency started its investigation into television advertising aimed at children and was branded the "national nanny," the commission has been under steady legislative siege. As a result, Congress has already curbed some of the expansive powers it gave to the commission in the 1970s.

But, while the FTC may require a more carefully crafted statutory harness, exempting professionals from the antitrust laws is too important an issue to be part of a bill disciplining the FTC for excessive social engineering.

Specifically, the bill as approved by the Senate Commerce Committee would prohibit the FTC from taking any action against, or even investigating, classic collusive activities — such as price fixing and group boycotts, restrictive professional codes, or other practices that can keep prices artificially high in the professions.

For example, in the health care area, the FTC could not investigate alleged conspiracies to obstruct cost-containment programs. The bill would also exempt state-licensed professionals from challenges under the FTC Act to false advertising and fraudulent marketing practices.

The Supreme Court recently affirmed by a tie vote an FTC decision barring the American Medical Association and its state affiliates from restricting truthful advertising by member physicians. If the bill approved by the Senate Commerce Committee were enacted by the full Congress, the FTC would not be able to enforce that order or others like it.

The Senate bill would not, however, alter the other federal antitrust laws. The Department of Justice could still bring criminal and civil actions; and private parties could institute treble damage actions challenging alleged violations by professionals of the Sherman Act and other federal antitrust laws.

State attorneys general could also bring suit against professionals to redress antitrust injuries suffered by citizens of their respective states. Thus, if the Senate bill were enacted, it would create a jurisdictional paradox — antitrust challenges involving the professions could be brought by the Justice Department, state attorneys general or private parties, but not the FTC.

This legal anomaly should be avoided.

Professional services are an increasingly important part of the economy. Restrictions on competition among professionals that increase consumer costs without producing countervailing benefits should be scrutinized closely.

There does not appear to be any sound justification for exempting professionals from the antitrust laws which apply to virtually all other business enterprises. If a special exemption is to be written for the profession, Congress should uniformly change all of the antitrust statutes. A legislative determination of this magnitude should not merely be an appendage to a bill reauthorizing the FTC for three more years.

*Earl W. Kintner, former general counsel and chairman of the Federal Trade Commission, is a senior partner in the law firm of Arent, Fox, Kintner, Plotkin and Kahn, and the author of 16 books on antitrust and trade regulation law.*

JUN-25-82

## CATHERINE ENGLAND

A different  
deregulation

In urging the Senate Commerce Committee to approve an amendment to the Federal Trade Commission reauthorization bill, Sen. Ted Stevens used all the right buzzwords. Accusing the FTC of "extending federal bureaucracy more and more into our daily lives," the Alaska Republican encouraged the committee to prohibit the FTC from taking antitrust action against state-licensed professional groups. Supporters of the Stevens amendment spoke of professionals' need for relief from FTC regulation and the right of states to handle these questions. The amendment passed, despite the objections of committee Chairman Bob Packwood, R-Ore. A closer look at the "deregulation" amendment, however, reveals it to be deregulation of a different color.

Sen. Stevens argued (persuasively within the committee) that since professional groups already are subject to state regulation, they should not be similarly regulated by the federal government. But the case is not as clear-cut as the senator and his allies — the American Medical Association, American Dental Association, and others — would have us believe.

Most state boards or commissions are charged with regulating various professions to protect public health and safety by making sure those who wish to pursue a given occupation are properly qualified.

Who is in a better position to determine the qualifications of a given individual than those already licensed and practicing that profession? Therefore, the very individuals who are being licensed or regulated generally have a strong influence, if not outright control of, the state boards doing the regulating.

The variety of actions falling under "standards of conduct" regulations, often determined by non-profit professional associations, may be very broad, indeed. The best known examples of such regulations are those prohibiting advertising by various professional

groups — particularly doctors and lawyers.

Why should consumers care whether doctors and lawyers advertise? First of all, advertising may provide useful information: office hours, telephone numbers, office location, availability for house calls, fees for basic services, etc. Even more important, however, advertising introduces competition. When consumers can compare office hours or the prices for teeth cleaning, they are better able to determine the best service for their money and, hence, force others to be more competitive.

A 1975 study comparing eyeglass prices in states that allowed advertising with states that did not concludes that advertising restrictions increased eyeglass prices by as much as 34 percent. More recently, since the FTC preempted state standards of conduct and allowed eye doctors and opticians to advertise their prices, the cost of soft contact lenses has dropped from an average of \$256 in 1978 to \$146 in 1981, after adjusting for inflation.

Rather than chafing under restriction imposed at the state level, many professional groups welcome them. They restrict entry and, better yet, prevent some young upstart trying to establish a practice from undercutting prices or offering longer office hours.

The FTC, therefore, could provide what is almost nonexistent on state boards and commissions — a voice for consumers. The FTC has never questioned licensing procedures or any other practices directed at determining who is fit to practice. The commission readily admits its lack of expertise in this area and believes those functions should be left where they now are.

One must ask, why, professional groups should be exempted from laws pertaining to everyone else. The answer is: they shouldn't. As James C. Miller III, the FTC's deregulation-minded chairman, has put it, "A graduate degree is a guarantee of special training. It should not be a guarantee of immunity from FTC law enforcement."

While one might find many reasons to criticize the FTC, the history of its actions with respect to "professional groups" shows an uninterrupted attempt to remove unnecessary protectionist restrictions and allow the market to work. Consumers of professional services have much to gain from these actions.

*Catherine England is an economist at the Heritage Foundation.*

JUN-13-82

## Professional Free Enterprise

Congress has prohibited the Federal Trade Commission from requiring used car dealers to disclose flaws to buyers, and now it is moving to knock away the public's umbrella of protection from the anticompetitive practices of the professions. Even the Reagan administration is growing faint-hearted with this step in deregulation, with good reason. Consumers everywhere should be nervous, too.

The Senate Commerce Committee has amended the reauthorization bill of the FTC so that any profession licensed by a state government would be exempt from the jurisdiction of the FTC. A similar amendment in the House of Representatives has more than 160 sponsors, who, coincidentally, have received more than \$800,000 in campaign contributions from medical political action committees that are leading the effort to get the professions exempted from FTC regulation.

If the legislation is successful, the FTC could not enforce laws against kickbacks, price-fixing, boycotts against professionals and other practices that hamper competition and that drive up consumer prices. Every other class of business would remain under the jurisdiction of the FTC.

James Miller, the chairman of the FTC, who was appointed by President Reagan, has advocated greatly narrowing the agency's authority, but he has drawn the line at the professional exemption. That tells you something about how bad it is. "Admission to a profession should be a guarantee of competence, not a guarantee of immunity from the laws the rest of us must obey," Mr. Miller said.

Groups such as the American Medical Association attempt to justify the exemption on the ground that state governments and the professional organizations already regulate the professions and that the public is protected from abuses. They say the FTC's lawyers and the other bureaucrats with no medical competence shouldn't be meddling with specialized health professions because the integrity of the professions can be eroded.

But state regulation and the interests of the FTC don't overlap. On the contrary, state licensing of professions and trades is almost never

concerned with price-fixing and other anticompetitive practices. The opposite is often the case. State licensing agencies are usually created at the behest of a trade or professional group, which frequently proceeds to limit entry into the trade or profession under the new licensing law. The FTC has never proposed to interfere with the licensing or qualifications of persons in professional fields.

The FTC's record on professional regulation is in the best spirit of American free enterprise. In 1978, it invalidated trade association agreements and state laws that prohibited the advertising of eyeglass prices, and between 1978 and 1981 the average price of soft contact lenses, adjusting for inflation, declined from \$256 to \$146.

What specifically troubles the AMA and other professional groups is the FTC order, upheld by the United States Supreme Court in March, that prohibits medical associations' restrictions on physician advertising in which truthful information about physicians' prices and services is disseminated. The order also prohibits associations' ban on cost-saving contracts between doctors and lay institutions such as hospitals and health maintenance organizations. The FTC also has banned similar restrictions on dental advertising.

Also affected by the bill are FTC orders against medical association bans on doctors practicing for a salary rather than on a fee-for-service basis, against a physician boycott of hospital emergency rooms because the hospitals contract with recruited physicians, and against medical organizations issuing fee guides that can be used to fix prices for doctor services.

Most of the FTC investigations have a direct bearing on the skyrocketing cost of medical care, such as price-fixing agreements where doctors agree not to work below "usual rates," kickbacks involving physicians and a major Medicaid laboratory, and physician boycotts of cost-containment programs developed by insurance companies, businesses and unions.

A little free enterprise is not bad for the professions, too.

Consumers may want to watch how their representatives vote on this important legislation.

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JUN 16 1982

## Congress must not cripple the FTC

Having denied the Federal Trade Commission (FTC) authority to protect consumers from shady used-car dealers, the Congress now is setting its sights on stripping the agency of its limited but important power to regulate certain professions. Should Congress prevail, it's consumers who'd once again be the big losers.

The FTC has been involved in professional regulation since a 1975 U.S. Supreme Court decision found that minimum fee schedules enforced by legal groups amounted to illegal price-fixing. Since some states could not or would not monitor such activities, and because much professional activity involves interstate commerce, the FTC was the ideal agency to fill the regulatory vacuum.

Among the pro-consumer actions for which the FTC deserves credit are these:

• Allowing professionals to advertise fees and services;

• A crackdown on efforts by the medical profession to force increases in Medicaid fees and to kill cost-containment programs organized by insurers;

• Enforcement of regulations designed to give consumers access to lower-cost generic drugs.

It so happens that professional groups, through their well-financed political action committees, are among the major contributors to members of Congress. Those groups undoubtedly are counting on their "friends" in the Senate and House to treat them of the "burdensome" requirements imposed by the FTC.

While it may be true that money speaks loudest in Washington, members of Congress should not lose sight of the fact that they must stand for re-election this fall. Yet another anti-consumer vote by the Congress undoubtedly would result in retaliation at the polls.

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## Gutting The FTC

Do we want in this country a privileged class of professionals who could engage in price-fixing and other anti-competitive acts and yet be immune from scrutiny by the Federal Trade Commission?

Obviously not.

But that is what we could get if a bill being pushed by physicians, dentists, lawyers, engineers, architects, accountants and other professional groups is passed by Congress.

★ ★ ★

In recent years the FTC has been probing price-fixing, boycotts, fraud and deception, restrictions on advertising and other practices by professional bodies that artificially raise prices.

Naturally, the professionals re-

The purported reason was that they are already "state-licensed." That reasoning is specious.

Most state professional boards are dominated by the persons they are supposed to regulate, and most put the financial interest of the professions above the public's interest in heightened competition.

★ ★ ★

FTC Commissioner Michael Perishuk angrily called the committee vote "a tribute to the naked political power" of the American Medical Association and the American Bar Association.

While they were at it, committee members also approved a proposal to forbid the FTC to look into unfair advertising.

# THE CHRISTIAN SCIENCE MONITOR

"First the blade, then the ear,  then the full grain in the ear"

The Monitor's view

Thursday, May 13, 19

## Don't exempt the 'privileged class'

Even Federal Trade Commission Chairman James Miller III — a conservative who has led the fight for a smaller, less activist FTC — expressed dismay at how far a Senate committee went this week in reducing the agency's clout. The Senate Commerce Committee exempted professionals — doctors, lawyers, accountants, dentists, etc. — from scrutiny by the FTC. And that, argues Mr. Miller, is bad economics and bad politics because "it sets aside the privileged class in this country . . . from laws and enforcement efforts that govern everyone else's behavior."

Mr. Miller is right: What the committee action would mean is that the FTC would be barred from investigating or charging professionals who may be engaged in, among other things, deceptive trade methods, price-fixing, or creating trade codes that deliberately restrict competition. And the professionals who would be so excluded are persons who not only have tremendous political influence and ready access to large amounts of campaign funds but who deal almost daily with a significant percentage of the US population.

Fortunately, both the full Senate and

House have yet to act on the proposal. Such an egregious blanket exemption for one entire class of persons in US society — while others, such as corporate business executives and wage earners, are not similarly exempted — should be quickly rejected. The issue, after all, is not to so overregulate professionals as to inhibit their performance. Rather, the FTC would seem to have an obligation to investigate and thwart clearly unreasonable trade abuses by professionals — abuses that not only injure the general public but also work against honest persons operating in the same professions.

One final point of note: the Commerce Committee also voted to take away the FTC's authority to ban advertisements that are only "unfair" but not necessarily deceptive. It is interesting that the cigarette industry lobbied particularly intensively for that particular exclusion. Some FTC lawyers believe that such an exemption could take away the agency's authority over cigarette warning labels. The "unfair" advertising exclusion, like the exclusion on regulating professionals, is dubious legislation that should be forthrightly scrapped by Congress as a whole.

List of Key Leaders

House of Representatives

The Honorable John D. Dingell  
Chairman  
Committee on Energy & Commerce

The Honorable James T. Broyhill  
Ranking Republican  
Committee on Energy & Commerce

Senate

The Honorable Bob Packwood  
Chairman  
Committee on Commerce, Science  
and Transportation

The Honorable Howard W. Cannon  
Ranking Democrat  
Committee on Commerce, Science  
and Transportation