

**Statement of the
American College of Nurse Practitioners
Regarding**

The Impact on Consumers of Possible Anticompetitive Efforts to Restrict Competition on
the Internet: Telemedicine and Pharmaceutical Online Sales

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I want to thank the commission on behalf of the American College of Nurse Practitioners (ACNP) for the opportunity to address an issue of concern to millions of American consumers and their health care providers. The College welcomes the timely occasion to offer comments on consumer protection and practice competition in the context of business-to-consumer e-commerce.

The American College of Nurse Practitioners represents more than 30,000 nurse practitioners through a multi-tier system of individuals, local group, state and national affiliate organizations and serves as the voice for nurse practitioners on public policy issues on the federal level. I have the honor of serving as chair of the College's Pharmaceutical Issues Task Force.

Nurse practitioners have been delivering safe and effective health care to people of all ages, in both traditional and non-traditional health care settings, for more than 38 years.

For example, I am a board-certified NP in New York State with an independent pediatric practice of more than 5000 registered patients. The practice employs three other NPs and averages close to 10,000 documented office visits a year. Clinicians and staff alike provide bilingual primary health care services that are highly respected and valued by a culturally diverse community. Graduate NP and medical students receive precepted clinical education and experience in this challenging setting. Another representative colleague is a board-certified NP and doctor of public health in South Carolina whose

pediatric practice serves a largely poor and underserved population, many of whom are uninsured. The practice also provides the only specialty child abuse care, including sexual assault evaluation, available in the community and surrounding region.

NPs are licensed to practice in every state and the District of Columbia and are certified by national organizations in a number of advanced practice specialties. In accord with the laws of the states where they practice, nurse practitioners are largely graduate educated. They take histories, perform physical exams, assess and treat illness and injury, and prescribe and monitor therapeutic interventions. They care for patients both independently and in collaboration with other health professionals. They write prescriptions in all but one state. In the vast majority of states, NPs are authorized to register with the DEA to obtain authority to prescribe controlled substances according to the laws of each state.

The core problem is that many consumers who are specifically instructed by their health plans to use mail order/Internet pharmacy services as well as those consumers who choose to for convenience and cost savings are being denied these benefits. This is occurring because a number of the pharmacies are refusing to fill prescriptions written by nurse practitioners.

According to the Code of Federal Regulations, federal guidelines do not, in themselves, prohibit a pharmacist from filling a prescription written by a provider who is legally authorized to prescribe under the laws of a particular state (CFR, 2002). Some states, however, impose complex and unnecessary restrictions on who can prescribe. In previous written Testimony, Byrne and Hellman cite examples of restrictive practices from both Texas law and the business practices of a New Jersey on-line pharmacy. “Under Texas pharmacy regulations, an out-of-state prescription is honored to the extent that the prescriber is ‘a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs...’ (as cited in Texas Administrative Code). In Texas, then, an out-of-state prescriber’s authority to prescribe is subsumed under the authority of an equivalent in-state prescriber to prescribe.” (Byrne & Hellman, 2002).

The interpretation of the New Jersey pharmacy law by an on-line pharmacy declares that, “prescriptions must comply with the prescribing regulations that govern NPs licensed in New Jersey” (Byrne & Hellman, 2002). In fact, Byrne and Hellman’s review of the law found that there is no language in New Jersey pharmacy law requiring compliance with in-state NP prescribing law. “Rather, pharmacists under New Jersey law have the right to refuse a prescription that is ‘outside the prescriber’s scope of practice’ (as cited in New Jersey Administrative Code) – *the* prescriber, not an equivalent New Jersey prescriber. By all accepted definitions, *the* prescriber is the one who writes the prescription.” (Byrne & Hellman, 2002).

The true impact of these practices, both in economic and therapeutic terms, is unclear; however, anecdotal evidence suggests that the impact may be great. Scott Levin projected that NPs would write about 239 million prescriptions in (2000 (Diamond, 2000)). It can be expected that the number of patients who are unable to fill prescriptions at certain mail order/Internet pharmacies will increase exponentially in the coming years. Many of our members tell us of patients who must choose between paying more for their medications to keep the provider they know and trust, or choose another provider to access the cost savings of a mail order/Internet pharmacy. The ACNP plans to collect data from its members on the prevalence of this restrictive practice and would be happy to forward that information to the commission at a later date.

Access to care is a significant and growing issue in this country. With over forty one million uninsured and many more underinsured, large numbers of people have great difficulty finding and maintaining an effective therapeutic relationship with any primary care provider—nurse practitioner and physician alike. Poorly conceived regulations and restrictive interpretations of regulations that prevent access to legally credentialed health care providers are not only unfair, but needlessly jeopardize the health of consumers.

The American College of Nurse Practitioners appreciates the efforts of the FTC to protect consumers in this arena. Nurse practitioners have always advocated for their patients and are well represented in the care of the underserved. We stand ready to assist in any way we can.

The ACNP respectfully requests an investigation into these undue restrictions that are limiting consumer's choice of pharmacy provider and indirectly limiting their choice of healthcare provider as well.

Again, we thank you for the opportunity to appear before you today.

The American College of Nurse Practitioners acknowledges the work of the following two practitioners in conducting the research for and preparation of this statement.

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References

FDA General regulations for drugs, 21 C.F.R. 200-299
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