



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

Office of Policy Planning
Bureau of Competition
Bureau of Economics

April 6, 2018

Office of the Professions
Office of the Deputy Commissioner
New York State Education Department (“NYSED”)
89 Washington Avenue, 2M
Albany, NY 12234

Via email to opdepcom@nysed.gov

Re: EDU-06-18-00010-P, Endorsement Requirements for Licensure as a Dentist

The staffs of the Federal Trade Commission’s (“FTC”) Office of Policy Planning, Bureau of Economics, and Bureau of Competition (collectively, “FTC staff”)¹ appreciate the opportunity to respond to your request for comments on the proposed amendment to N.Y. COMP. CODES R. & REGS. tit. 8, § 61.4. We write in support of the proposed amendment, which would permit experienced, licensed Canadian dentists to use the same procedures that established, practicing dentists in other U.S. states follow to become licensed in New York State.²

Current law presents significant barriers to Canadian dentists who wish to practice in New York. By reducing these barriers, the proposed amendment will increase the pool of dentists qualified for licensure in New York. In turn, Canadian dentists may improve access to dental services in underserved areas of the state, such as the North Country region. By increasing the available supply of qualified dentists, the proposed amendment likely would increase competition among dentists practicing in New York. The benefits of additional competition could include an increased range of choices available to consumers, improved dental outcomes, and reduced dental costs for consumers.

I. Interest and Experience of the Federal Trade Commission

The FTC is charged under the FTC Act with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.³ Competition is at the core of America’s economy,⁴ and vigorous competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, and increased innovation. Because of the importance of health care competition to the economy and consumer welfare, anticompetitive conduct in health care markets has long been a key focus of FTC law

enforcement,⁵ research,⁶ and advocacy activities.⁷ Many of our recent advocacy comments have addressed scope of practice and supervision requirements that may unnecessarily limit the range of procedures or services a practitioner may provide, or unnecessarily restrict a particular type of practitioner from competing in the market.⁸ This FTC staff comment on NYSED’s proposed amendment builds on the FTC’s extensive experience in two important areas that affect many consumers: oral health care and occupational licensing barriers to providing health care services across state boundaries.

A. Oral Health Care

FTC staff has addressed competition issues related to oral health care in both law enforcement actions⁹ and policy initiatives.¹⁰ For example, in 2003, the Commission sued the South Carolina Board of Dentistry, charging that the Board had illegally restricted dental hygienists from providing preventive dental services in schools unless students were first examined by a dentist,¹¹ thereby unreasonably restraining competition and depriving thousands of economically disadvantaged schoolchildren of needed dental care, with no justification.¹² The Board ultimately entered into a consent agreement settling the charges.¹³

Recent FTC staff advocacy comments have also supported legislative and regulatory proposals to enhance competition in the dental marketplace. In January 2016, FTC staff urged the Georgia State Senate to consider the procompetitive benefits of a bill that sought to broaden the availability of dental hygiene services by expanding the settings where hygienists could provide their services without direct supervision by a dentist on the premises. Thus, the bill could have increased access to hygiene services in rural or underserved areas where dentists are scarce or unavailable.¹⁴ FTC staff comments have also supported licensing of dental therapists—a relatively new type of “mid-level” dental practitioner who offers some of the same basic services offered by dentists—to enhance competition, reduce costs, and expand access to dental care.¹⁵

B. Occupational Licensing Barriers to Providing Health Care Across State Lines

FTC advocacy and policy activities have also sought to reduce limitations on the provision of health care services across state lines arising from occupational licensing. For example, FTC advocacy has sought to reduce barriers imposed by occupational licensing on telehealth—the use of telecommunications to provide health care services to remotely located patients. Occupational licensing often restricts the provision of telehealth services because of the intrinsic ability of telehealth to enable practitioners to provide services across jurisdictional boundaries.¹⁶

More generally, since the late 1970s, the Commission and its staff have conducted economic and policy studies relating to licensing requirements for various occupations and professions,¹⁷ and submitted numerous advocacy comments to state and self-regulatory entities on competition policy and antitrust law issues relating to occupational regulation, including the regulation of health professions.¹⁸ Building on this work, in 2017 the FTC formed the Economic Liberty Task Force (“ELTF”) that has been examining a broad range of licensing issues, including occupational license portability.¹⁹ On July 27, 2017, the ELTF held a roundtable,

Streamlining Licensing Across State Lines: Initiatives to Enhance Occupational License Portability, to examine ways to mitigate the effects of state-based occupational licensing requirements that make it difficult for those licensed by one state to obtain a license in another state.²⁰ These advocacy comments and activities, which underscore the importance of licensure portability to an occupation and consumers, underpin this comment.

II. NYSED’s Proposed Rule on Licensure by Endorsement of Canadian Dental Licenses

In New York, as in most other states, dentists licensed by other jurisdictions may obtain licensure through an endorsement process, which allows dentists to become licensed based on their credentials, without repeating the initial licensure examinations.²¹ New York’s current endorsement regulation is N.Y. COMP. CODES R. & REGS. tit. 8, § 61.4. The regulation allows dentists licensed by “another jurisdiction of the United States” for at least two years to obtain licensure in New York after submitting evidence that they have met the state’s requirements regarding education and examination,²² and have been in the “lawful and reputable practice in dentistry for not less than eight months during the two years” before filing the application.²³ Like all professions regulated by the NYSED, the process for endorsement of an out-of-state dental license is administered by the NYSED with the assistance of the state board for the profession,²⁴ and includes requirements applicable to all professions regulated by the NYSED.²⁵

In most states, licensure by endorsement allows licensed dentists to obtain a license in another jurisdiction without repeating the written and clinical examinations required for initial licensure.²⁶ Endorsement is particularly important with regard to clinical examinations, because there is no single U.S. national standard for demonstrating clinical competence in dentistry. Although dentistry’s education and written examination standards are national, its clinical examinations are not; most states rely on clinical examinations offered by one of five regional organizations.²⁷

The availability of licensure by endorsement is even more important in New York, because the state has taken a different approach to demonstrating clinical competence than almost all other states. Instead of a clinical examination, applicants for initial licensure in New York must complete a clinically-based, postdoctoral general practice or specialty dental residency program of at least a year’s duration, a major hurdle that is required by only one other U.S. jurisdiction.²⁸ New York’s existing licensure by endorsement regulation allows dentists from other jurisdictions who have been practicing for at least two years to avoid this requirement, even though almost all will have been licensed on the basis of a clinical examination rather than a one year, clinically-based residency.²⁹

NYSED’s proposed amendment of N.Y. COMP. CODES R. & REGS. tit. 8, § 61.4 would extend the existing endorsement process applied to U.S. dentists to dentists licensed by “a Canadian province.”³⁰ The requirements for licensure in Canadian provinces and the quality of education and training at Canadian dental schools are comparable to those in the United States. The U.S. accrediting organization, the Commission on Dental Accreditation (“CODA”), recognizes by reciprocal agreement dental education programs accredited by the Commission on Dental Accreditation of Canada, and graduates of accredited Canadian dental programs are

eligible for licensure in the United States.³¹ Canadians also must take written and clinical examinations, both of which are administered by the National Dental Examining Board of Canada.³² Canadian dentists also do not have to complete a clinically-based postdoctoral residency requirement, which is also not a requirement in U.S. jurisdictions except New York and Delaware.³³

Because completion of a residency is not required for licensure in Canada, New York's postdoctoral residency requirement has been a barrier for Canadian dentists seeking licensure in New York.³⁴ The proposed amendment to extend New York's licensure by endorsement provisions to dental licenses issued by Canadian provinces would lift this barrier as well as generally lower the burden of licensure for a pool of dentists with education and training similar to dentists initially licensed by U.S. jurisdictions.³⁵

III. Likely Competitive Impact of NYSED's Proposed Rule

Even when licensing serves a legitimate health and safety purpose, licensing requirements restrict the supply of practitioners and reduce competition, and therefore may reduce access to services and increase the price that consumers pay for them. Because licensing rules are almost always state-based,³⁶ it can be difficult for a qualified person licensed in one state to become licensed in another state, even when professionals in every state are held to the same underlying standards. The need to obtain a license in another state can reduce interstate mobility and practice, and in some professions may lead licensees to exit their occupations when they move to another state. The need for licensing in another state may also limit consumers' access to services, particularly when providers are in short supply.³⁷

A. Licensure Portability in Dentistry

In dentistry, although education and written examination requirements are national, requirements to demonstrate clinical competency are not, a situation that creates a barrier to licensure in a new state.³⁸ Furthermore, dentistry currently has no nationwide licensure portability initiative such as a licensure compact or model law. Endorsement is currently the only means of reducing the burden of obtaining a license in another jurisdiction. Although an endorsement process typically does not entirely eliminate barriers to obtaining licensure in another state, it is a common mechanism for reducing the burden of licensure for experienced, out-of-state licensees. In other health professions such as medicine and nursing, licensure compacts add to the portability provided by state endorsement processes.³⁹

In dentistry, American Dental Association ("ADA") policy supports the goals of reducing the burden of obtaining a license in another jurisdiction and improving dentist mobility, and has helped expand the availability of endorsement from a few states to almost all of them.⁴⁰ ADA policy "states that requiring a candidate who is seeking licensure in several jurisdictions to demonstrate his or her theoretical knowledge and clinical skill on separate examinations for each jurisdiction seems unnecessary duplication."⁴¹ To help address this issue, the ADA is in the process of creating a national clinical licensure examination, the Dental Licensure Objective Structured Clinical Examination ("DLOSCE"), similar to the clinical examination used in Canada.⁴² If adopted by state dental boards, the DLOSCE should improve licensure portability in

dentistry.⁴³ Generally, uniformity in licensing requirements enhances license portability, and contributes to the success of nationwide initiatives to enhance licensure portability such as licensure compacts and model laws, as well as state-based endorsement procedures.

New York's existing endorsement process for dentists eliminates a significant burden for dentists licensed in other U.S. jurisdictions: the requirement to complete a one year clinically-based residency requirement.⁴⁴ By extending the endorsement process to dental licenses issued by Canadian provinces, the proposed amendment would eliminate this barrier for Canadian dentists, and thereby increase the pool of dentists qualified for licensure in New York. Extending the endorsement process to licenses issued by Canadian provinces should increase the pool of potential New York licensees without affecting their quality. As explained in the New York State Register notice, "public protection will be maintained as access to dental services is improved in New York State by permitting licensure as a dentist by endorsement of Canadian dentist licenses."⁴⁵

B. Effects of the Proposed Amendment on Competition, Access, and Choice

To the extent that the proposed amendment to extend the endorsement process to licenses issued by Canadian provinces could increase the supply of dentists, it may promote competition, increase access and consumer choice, and decrease the price of dental services. Indeed, the NYSED specifically states that the purpose of the proposed amendment is to increase access to dental services in underserved areas of New York.⁴⁶ While New York's overall population-to-dentist ratio is better than the national average, the New York State Department of Health has observed that "there is a striking variability in the distribution of dentists regionally across the state,"⁴⁷ and there are shortages in many rural and inner-city areas.⁴⁸ For example, the number of dentists per 100,000 residents in Long Island is about twice that in the North Country bordering Canada, which the Department of Health considers a dentally-underserved area.⁴⁹ There are 121 Dental Health Professional Shortage areas in New York, including a number in the North Country and other rural areas.⁵⁰

C. Effects of Proposed Amendment on Faculty Recruitment

Another purpose of the proposed amendment is to improve the ability of some dental schools located in New York State to recruit Canadian dentists for faculty positions. Some schools of dentistry have had difficulty recruiting and retaining faculty.⁵¹ New York's one-year residency requirement has stymied dental faculty recruitment from Canada, because potential faculty members cannot obtain unrestricted licenses that would allow them to engage in private practice without completing a clinically-based residency. Because they cannot obtain an unrestricted dental license without completing a residency, a number of Canadian candidates for faculty positions declined offers by the University of Buffalo and other schools.⁵² The proposed amendment would eliminate the barrier for licensure of Canadian dentists and make it easier for New York dental schools to recruit them for faculty positions.

By improving recruitment of Canadian dentists for faculty positions, the proposed amendment could also help increase the supply of dentists and access to services in underserved communities near the dental schools. Improved recruitment of faculty might lead to an increase

in student dentists providing services at dental schools and at extramural clinics in underserved communities. In addition, students with such experience might be more likely to provide services to underserved populations after graduating.⁵³

IV. Conclusion

Competition among health professionals, including dentists, has the potential to benefit consumers. By extending New York's existing process for endorsement to dental licenses issued by Canadian provinces, the proposed amendment would decrease barriers to licensure of Canadian dentists, and increase the pool of dentists qualified for licensure. Accordingly, the proposed amendment could potentially increase the supply of dentists, and thereby promote competition and consumer choice, increase access to dental care, and decrease the price of dental services. The proposed amendment may promote such benefits in both underserved areas, such as the North Country region, and other areas of New York. It could also improve the ability of dental schools to recruit Canadian dentists to faculty positions, which might also increase access to care in nearby underserved communities. In sum, FTC staff support the proposed amendment because it would likely increase competition among dentists, increase access to dental services, improve dental outcomes, and reduce consumers' dental costs, thereby benefiting New York residents.

Thank you for the opportunity to provide our views. We appreciate your consideration.

Respectfully submitted,

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¹ This letter expresses the views of staff in the Federal Trade Commission's Office of Policy Planning, Bureau of Economics, and Bureau of Competition. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission, however, has authorized us to submit these comments.

² See 40 N.Y. Reg. 18 (Feb. 7, 2018).

³ Federal Trade Commission Act, 15 U.S.C. § 45.

⁴ *Standard Oil Co. v. FTC*, 340 U.S. 231, 248 (1951) (“The heart of our national economic policy long has been faith in the value of competition.”).

⁵ See generally MARKUS H. MEIER ET AL., FTC, OVERVIEW OF FTC ACTIONS IN HEALTH CARE SERVICES AND PRODUCTS, <https://www.ftc.gov/tips-advice/competition-guidance/industry-guidance/health-care> (most recent version under “Core Health Care Competition Documents”).

⁶ See, e.g., FTC & U.S. DEP’T OF JUSTICE, IMPROVING HEALTH CARE: A DOSE OF COMPETITION (2004), <http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf>.

⁷ FTC and staff advocacy can include letters or comments addressing specific policy issues, Commission or staff testimony before legislative or regulatory bodies, amicus briefs, or reports. See, e.g., Comment from FTC Staff to Paul Graves, Representative, Washington State Legislature (Feb. 9, 2018), <https://www.ftc.gov/policy/advocacy/advocacy-filings/2018/02/ftc-staff-comment-washington-state-rep-paul-graves>; Brief of Amicus Curiae FTC in Support of No Party, In re Nexium (Esomeprazole) Antitrust Litig., No. 15-2005 (1st. Cir. Feb. 12, 2016), https://www.ftc.gov/system/files/documents/amicus_briefs/re-nexium-esomeprazole-antitrust-litigation/160212nexiumbrief.pdf; FTC STAFF, POLICY PERSPECTIVES: COMPETITION AND THE REGULATION OF ADVANCED PRACTICE NURSES (“APRNs”) (2014), <https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf> (presenting an overview of FTC staff comments regarding APRNs, and an in depth analysis of the competitive effects of statutes and rules governing APRN scope of practice and supervision).

⁸ See, e.g., Comment from FTC Staff to the Iowa Dep’t of Public Health (Dec. 20, 2016), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-professional-licensure-division-iowa-department-public-health-regarding-proposed/v170002_ftc_staff_comment_to_iowa_dept_of_public_health_12-21-16.pdf (regarding the appropriate level of supervision of physician assistants); Comment from FTC Staff to the Dep’t of Veterans Affairs (July 25, 2016), https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-office-policy-planning-bureau-competition-bureau-economics-department-veterans/v160013_staff_comment_department_of_veterans_affairs.pdf (supporting proposed rule that would allow APRNs to provide services required by the VA without the oversight of a physician). Most FTC staff competition advocacy comments have focused on proposed state-level changes to statutes and rules. See, e.g., FTC STAFF, POLICY PERSPECTIVES, *supra* note 7.

⁹ See, e.g., *N.C. State Bd. of Dental Exam’rs v. FTC*, 135 S. Ct. 1101 (2015) (upholding an FTC ruling that the North Carolina State Board of Dental Examiners illegally thwarted lower-priced competition by engaging in anticompetitive conduct to prevent non-dentists from providing teeth whitening services to consumers in the state).

¹⁰ See, e.g., Comment from FTC Staff to the Tex. State Bd. of Dental Exam’rs (Oct. 6, 2014), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-texas-state-board-dental-examiners/141006tsbdecomment1.pdf (concerning proposed restrictions on the ability of Texas dentists to enter into agreements with non-dentists for administrative services); Comment from FTC Staff to the La. State Bd. of Dentistry (Dec. 18, 2009), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-louisiana-state-board-dentistry-concerning-proposed-modifications-louisianas/091224commentladentistry.pdf (concerning proposed rules on the practice of portable and mobile dentistry); Comment from FTC Staff to Sam Jones, State Representative, La. House of Representatives (May 22, 2009), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-louisiana-house-representatives-concerning-louisiana-house-bill-687-practice/v090009louisianahb687amendment.pdf (concerning legislation on the practice of in-school dentistry); Comment from FTC Staff to Timothy G. Burns, State Representative, La. House of Representatives (May 1, 2009), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-louisiana-house-representatives-concerning-louisiana-house-bill-687-practice/v090009louisianadentistry.pdf; see generally

Advocacy Filings by Subject, Dentistry, FED. TRADE COMM'N, https://www.ftc.gov/policy/advocacy/advocacy-filings?field_advocacy_document_terms_tid=5302.

¹¹ See S.C. State Bd. of Dentistry, 138 F.T.C. 229, 233-40 (2004).

¹² See *id.* at 232, 268-80.

¹³ S.C. State Bd. of Dentistry, 144 F.T.C. 615, 628 (2007) (decision and order). The Board sought to have the complaint dismissed on the ground that its actions were exempt from the antitrust laws by virtue of the state action doctrine, but the Commission denied the motion to dismiss. S.C. State Bd. of Dentistry, 138 F.T.C. 229 (2004).

¹⁴ See Comment from FTC Staff to Valencia Seay, Senator, Ga. State Senate (Jan. 29, 2016), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-georgia-state-senator-valencia-seay-concerning-georgia-house-bill-684/160201gadentaladvocacy.pdf (regarding removal of direct supervision requirements for dental hygienists). The Georgia State Senate did not adopt the bill. Similarly, FTC staff opposed rules proposed by the Georgia Board of Dentistry in 2010 and the Maine Board of Dental Examiners in 2011 because they would have required a dentist to be present for a dental hygienist to provide certain preventive services, which would have reduced access and increased costs. See Comment from FTC Staff to the Ga. Bd. of Dentistry (Dec. 30, 2010), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-georgia-board-dentistry-concerning-proposed-amendments-board-rule-150.5-0.3-governing-supervision-dental-hygienists/101230gaboarddentistryletter.pdf (opposing adoption of proposed rule changes that would have required indirect supervision by a dentist); Comment from FTC Staff to the Me. Bd. of Dental Exam'rs (Nov. 16, 2011), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-maine-board-dental-examiners-concerning-proposed-rules-allow-independent-practice/111125mainedental.pdf (opposing adoption of proposed rules that would have restricted the scope of practice of Independent Practice Dental Hygienists ("IPDH") participating in a pilot project designed to improve access to care in underserved areas of the state).

¹⁵ See Comment from FTC Staff to Peggy Lehner, State Senator, Oh. State Senate (March 3, 2017), <https://www.ftc.gov/policy/advocacy/advocacy-filings/2017/03/ftc-staff-comment-ohio-state-senate-regarding-competitive> (addressing the competitive effects of SB 330, including its provisions on general supervision and licensure of dental therapists); Comment from FTC Staff to CODA (Nov. 21, 2014), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-commission-dental-accreditation-concerning-proposed-accreditation-standards-dental/141201codacomment.pdf (urging implementation of accreditation standards for dental therapists); Comment from FTC Staff to the Commission on Dental Accreditation ("CODA") (Dec. 2, 2013), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-commission-dental-accreditation-concerning-proposed-accreditation-standards-dental/131204codacomment.pdf (concerning supervision requirements in proposed accreditation standards for dental therapists).

¹⁶ Thus, in a 2004 report, the federal antitrust agencies recommended that states "consider implementing uniform licensing standards or reciprocity compacts to reduce barriers to telemedicine and competition from out-of-state providers who wish to move in-state." See FTC & U.S. DEP'T OF JUSTICE, *supra* note 6, Executive Summary at 23. More recently, a 2016 FTC staff advocacy comment supported a bill that would allow Alaska-licensed physicians located out-of-state to provide telehealth services across state lines in the same manner as in-state physicians. See Comment from FTC Staff to Steve Thompson, Representative, Alaska State Legislature (Mar. 25, 2016), <https://www.ftc.gov/policy/policy-actions/advocacy-filings/2016/03/ftc-staff-comment-alaska-state-legislature-regarding>. In addition, a 2017 comment supported a rule proposed by the Department of Veterans Affairs ("VA") that would allow its health care providers to provide telehealth care regardless of whether they are licensed in the state where the patient is located. See Comment from FTC Staff to the Dep't of Veterans Affairs (Nov. 1, 2017), https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-department-veterans-affairs-regarding-its-proposed-telehealth-rule/v180001vatelehealth.pdf.

¹⁷ See, e.g., CAROLYN COX & SUSAN FOSTER, BUREAU OF ECON., FED. TRADE COMM'N, THE COSTS AND BENEFITS OF OCCUPATIONAL REGULATION (1990), http://www.ramblenuse.com/articles/cox_foster.pdf.

¹⁸ Many of these advocacy comments can be found at FTC, Advocacy Filings, <http://www.ftc.gov/policy/advocacy/advocacy-filings>.

¹⁹ See, e.g., *Occupational Licensing: Regulation and Competition: Hearing Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary*, 115th Cong. 1, 3, 6-7 (2017) (statement of Maureen K. Ohlhausen, Acting Chairman, Federal Trade Commission), https://www.ftc.gov/system/files/documents/public_statements/1253073/house_testimony_licensing_and_rbi_act_sept_2017_vote.pdf.

²⁰ See FTC, Streamlining Licensing Across State Lines: Initiatives to Enhance Occupational License Portability (event web page), <https://www.ftc.gov/news-events/events-calendar/2017/07/streamlining-licensing-across-state-lines-initiatives-enhance>.

²¹ See American Dental Association (“ADA”), Licensure by Credentials, <https://www.ada.org/en/education-careers/licensure/licensure-dental-students/licensure-by-credentials> (“Dental boards in 46 states plus the District of Columbia and Puerto Rico have authority to grant licensure by credentials.”). Licensure by endorsement is also referred to as licensure by credentials. See *id.*

²² See N.Y. COMP. CODES R. & REGS. tit. 8, § 61.4(a)(1) (dentists must meet “all requirements of section 59.6 of this Subchapter”).

²³ N.Y. COMP. CODES R. & REGS. tit. 8, § 61.4(a)(2).

²⁴ See N.Y. EDUC. LAW §§ 6506, 6507.

²⁵ See N.Y. COMP. CODES R. & REGS. tit. 8, § 59.6; N.Y. EDUC. LAW § 6506(6). Out-of-state professionals seeking licensure by endorsement in New York must (1) submit an application to the NYSED; (2) meet the education and examination requirements for licensure in New York; (3) have at least two years experience following initial licensure; (4) be at least 21 years of age; (5) be of good moral character; and (6) be a United States citizen or an alien lawfully admitted for permanent residence in the United States; and (7) complete certain training regarding reporting of child abuse. See N.Y. COMP. CODES R. & REGS. tit. 8, § 59.6; N.Y. EDUC. LAW § 6506(6), (7). Applicants seeking licensure by endorsement must not have attempted unsuccessfully a New York licensure examination, unless they pass a comparable licensing examination at a later time. See N.Y. COMP. CODES R. & REGS. tit. 8, § 59.6(c).

²⁶ See ADA, License Recognition: Dentists (2013), https://www.ada.org/~media/ADA/Advocacy/Files/licensure_recognition.pdf?la=en.

²⁷ See ADA, State Licensure for US Dentists, <https://www.ada.org/en/education-careers/licensure/state-dental-licensure-for-us-dentists>. Applicants for dental licensure must fulfill an education requirement, a written examination requirement, and a clinical examination requirement. Almost all states require “a D.D.S. or D.M.D. degree from a university-based dental education program accredited by the Commission on Dental Accreditation.” All U.S. jurisdictions require candidates to pass Parts I and II of the written National Board Dental Examinations. See *id.* Most U.S. jurisdictions also require a clinical examination established by the state board of dentistry. All but four U.S. licensing jurisdictions use one of five regional agencies to conduct the clinical examinations, which therefore vary from state-to-state. See *id.* See also Ahmad Abdelkarim & Donna Sullivan, *Attitudes and Perceptions of U.S. Dental Students and Faculty Regarding Dental Licensure*, 79 J. DENTAL EDUC. 81, 82 (2015) (“the clinical examination component is not consistent among the state boards of dental examiners”).

²⁸ See ADA, State Licensure for US Dentists, *supra* note 27 (“New York does not accept a clinical examination but requires applicants to complete an accredited postgraduate dental education program of at least one year in length (PGY-1). . . . Delaware requires completion of a PGY1 and a state-specific clinical examination.”). See also Board of Dentistry and Dental Hygiene, State of Delaware, Dentist License, https://dpr.delaware.gov/boards/dental/dentist_license/ (practical examination is required of all applicants, regardless of years of licensure; applicants must also complete a one year general practice residency or a four year specialty residency). Cf. N.Y. EDUC. LAW § 6604[3]; 40 N.Y. Reg. 18, 19 (Feb. 7, 2018) (“Currently, New York State is the only state that requires a residency for licensure purposes.”). A few other states give applicants for dental licensure the *option* of completing a one year postgraduate education program in lieu of a clinical examination. See ADA, State Licensure for US Dentists, *supra* note 27.

²⁹ See *supra* notes 22-23 and accompanying text. See also 40 N.Y. Reg. 18, 19 (Feb. 7, 2018) (“a dentist licensed in another state who is seeking licensure in New York, but has not completed one of these two types of residency programs, must have satisfactory professional experience of at least two years preceding the filing of their New York application”).

³⁰ 40 N.Y. Reg. 18 (Feb. 7, 2018).

³¹ See 40 N.Y. Reg. 18, 19 (Feb. 7, 2018); ADA, State Licensure for US Dentists, *supra* note 27.

³² See National Dental Examining Board of Canada (“NDEB”), Becoming a Licensed Dentist in Canada, <https://ndeb-bned.ca/en/requirements> (to qualify for licensure, graduates of accredited dental programs must receive NDEB certification by passing NDEB’s written examination and Objective Structured Clinical Examination). At least several U.S. states accept Canadian licensure examinations for either initial licensure or licensure by endorsement. See COLO. CODE REGS. § 709-1:III(C) (Colorado accepts Canadian examinations for licensure by endorsement); MINN. R. 3100.1400(C), (E) (providing for licensure by endorsement of licenses issued by Canadian provinces, with Canadian education and examinations); WASH. ADMIN. CODE § 246-817-110(2), (3) (with some limitations, Washington state accepts Canadian education and examinations for initial licensure).

³³ See 40 N.Y. Reg. 18, 19 (Feb. 7, 2018) (“the experience requirement for a Canadian dental license does not include the satisfactory completion of a clinically-based postdoctoral general practice or specialty dental residency program, of at least one year’s duration”); see *supra* note 28 and accompanying text.

³⁴ See 40 N.Y. Reg. 18, 19 (Feb. 7, 2018) (the clinically-based postdoctoral residency program “requirement has created obstacles for Canadian dentists seeking licensure in New York State”).

³⁵ See *id.* See also *infra* note 42 (ADA is developing a clinical licensure examination similar to Canada’s exam).

³⁶ See, e.g., *Dent v. West Virginia*, 129 U.S. 114 (1889) (upholding the right of the state of West Virginia to license physicians); HEALTH RESOURCES & SERVICES ADMIN., U.S. DEP’T OF HEALTH & HUMAN SERVICES, SPECIAL REPORT TO THE SENATE APPROP. COMM.: TELEHEALTH LICENSURE REPORT 7 (2010) (Requested by Senate Rep’t 111-66) (“For over 100 years, health care in the United States has primarily been regulated by the states. Such regulation includes the establishment of licensure requirements and enforcement standards of practice for health providers, including physicians, nurses, pharmacists, mental health practitioners, etc.”).

³⁷ See, e.g., *Occupational Licensing: Regulation and Competition: Hearing Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary*, 115th Cong. 1, 8-9 (2017), *supra* note 19 (statement of Maureen K. Ohlhausen, Acting Chairman, Federal Trade Commission); DEP’T OF THE TREASURY OFFICE OF ECONOMIC POLICY, COUNCIL OF ECONOMIC ADVISERS, DEP’T OF LABOR, OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS 12-16 (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.

³⁸ See *supra* notes 27-28 and accompanying text. See also Abdelkarim & Sullivan, *supra* note 27, at 86 (Students and faculty would prefer a single national examination, because a “single examination increases standardization of licensure, increases dentists’ mobility, and saves resources for those who desire to relocate to a different state”).

³⁹ See, e.g., AMERICAN MEDICAL ASSOCIATION, ISSUE BRIEF: INTERSTATE MEDICAL LICENSURE COMPACT 4 (2017), <https://www.ama-assn.org/sites/default/files/media-browser/specialty%20group/arc/fsmb-interstate-medical-licensure-compact-issue-brief.pdf> (physicians may qualify for expedite licensure in multiple states under the Interstate Medical Licensure Compact, or obtain “licensure by endorsement, which many states already have in place”); NATIONAL COUNCIL OF STATE BOARDS OF NURSING, WHAT YOU NEED TO KNOW ABOUT NURSING LICENSURE AND BOARDS OF NURSING 9 (2011), https://www.ncsbn.org/Nursing_Licensure.pdf (under the Nurse Licensure Compact, nurses can practice in multiple states without obtaining a license in each one; in addition, a “nurse licensed in one jurisdiction can usually be licensed in a second jurisdiction through a process called endorsement”).

⁴⁰ See ADA, Licensure by Credentials, *supra* note 21; ADA, Licensure Overview (2017), <https://www.ada.org/en/education-careers/licensure> (While the ADA “recognizes and supports the state’s right to regulate dental licensure, it has adopted policies on licensure issues, including freedom of movement for dentists,

increased standardization of clinical licensing examinations, specialty licensure and the use of human subjects in clinical examinations.”).

⁴¹ ADA, Licensure by Credentials, *supra* note 21.

⁴² See Kimber Solana, *Committee members overseeing the development of national dental licensure exam appointed*, ADANEWS (April 24, 2017), <https://www.ada.org/en/publications/ada-news/2017-archive/april/committee-members-overseeing-the-development-of-national-dental-licensure-exam-appointed> (the “ADA Board of Trustees sought the creation of the exam to help address issues of portability” and to “support[] current ADA policy calling for the elimination of patients from the dental licensure examination process”); Kimber Solana, *ADA Board of Trustees votes to create national dental licensure exam*, ADANEWS (March 10, 2017), <https://www.ada.org/en/publications/ada-news/2017-archive/march/ada-board-of-trustees-votes-to-create-national-dental-licensure-exam>.

⁴³ See ADA, Dental Licensure Objective Structured Clinical Examination (DLOSCE) FAQ 1, 2 (2017), https://www.ada.org/~media/ADA/Education%20and%20Careers/Files/DLOSCE_FAQ.pdf?la=en (the DLOSCE will support licensure portability and other goals, but each “dental board will make its own choice as to whether to use or not use the DLOSCE”).

⁴⁴ See *supra* note 28 and accompanying text.

⁴⁵ See 40 N.Y. Reg. 18, 19 (Feb. 7, 2018) (explaining that CODA’s recognition of Canadian dental education programs will ensure protection of NY residents).

⁴⁶ See 40 N.Y. Reg. 18, 19 (Feb. 7, 2018).

⁴⁷ NEW YORK STATE DEP’T OF HEALTH, ORAL HEALTH PLAN FOR NEW YORK STATE 31 (Dec. 2014), https://www.health.ny.gov/prevention/dental/docs/oral_health_plan_2014.pdf.

⁴⁸ See *id.* at 16.

⁴⁹ See *id.* at 31.

⁵⁰ See *id.*

⁵¹ See NEW YORK STATE DEP’T OF HEALTH, *supra* note 47, at 16.

⁵² See 40 N.Y. Reg. 18, 19 (Feb. 7, 2018).

⁵³ See, e.g., Keith A. Mays & Meghan Maguire, *Care Provided by Students in Community-Based Dental Education: Helping Meet Oral Health Needs in Underserved Communities*, 82 J. DENTAL EDUC. 20, 21 (2018) (examining dental services provided by faculty-mentored University of Minnesota School of Dentistry students as part of the school’s community-based dental education program, a program established to address CODA predoctoral education standards); NEW YORK STATE DEP’T OF HEALTH, *supra* note 47, at 16 (“Educational and training opportunities are needed in underserved areas to improve the oral health of communities.”); INSTITUTE OF MEDICINE AND NATIONAL RESEARCH COUNCIL, IMPROVING ACCESS TO ORAL HEALTH CARE FOR VULNERABLE AND UNDERSERVED POPULATIONS 8 (2011), <https://www.nap.edu/download/13116> (recommending recruitment of faculty with experience and expertise in caring for underserved populations to prepare students to provide care in such settings and increase the likelihood that they will practice in such settings in the future).