

By: Dunnam

H.B. No. 3964

A BILL TO BE ENTITLED

AN ACT

relating to a requirement that physicians file certain advertising with the Texas Medical Board.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 153.002, Occupations Code, is amended to read as follows:

Sec. 153.002. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except:

(1) to prohibit false, misleading, or deceptive practices by the person; and

(2) as provided by Section 153.0021.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) subject to Section 153.0021, restricts the use of any advertising medium;

(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

SECTION 2. Subchapter A, Chapter 153, Occupations Code, is

1 amended by adding Section 153.0021 to read as follows:

2 Sec. 153.0021. FILING REQUIREMENTS FOR PUBLIC
3 ADVERTISEMENTS AND WRITTEN, RECORDED, ELECTRONIC, OR OTHER DIGITAL
4 SOLICITATIONS. (a) The board by rule shall establish an
5 advertising review committee to perform the duties assigned by this
6 section.

7 (b) Except as provided in paragraphs (c) and (e) of this
8 section, a physician shall file with the advertising review
9 committee, no later than the mailing or sending by any means,
10 including electronic, of a written, audio, audio-visual, digital
11 or other electronic solicitation communication:

12 (1) a copy of the written, audio, audio-visual,
13 digital, or other electronic solicitation communication being sent
14 or to be sent to one or more prospective patients for the purpose of
15 obtaining professional employment, together with a representative
16 sample of the envelopes or other packaging in which the
17 communications are enclosed;

18 (2) a completed physician advertising and
19 solicitation communication application; and

20 (3) a check or money order payable to the Texas Medical
21 Board for the fee set by the board. Such fee shall be for the sole
22 purpose of defraying the expense of enforcing the rules related to
23 such solicitations.

24 (b) Except as provided in paragraph (e) of this section, a
25 physician shall file with the advertising review committee, no
26 later than the first dissemination of an advertisement in the
27 public media, a copy of each of the physician's advertisements in

1 the public media. The filing shall include:

2 (1) a copy of the advertisement in the form in which it
3 appears or will appear upon dissemination, such as a videotape,
4 audiotape, DVD, CD, a print copy, or a photograph of outdoor
5 advertising;

6 (2) a production script of the advertisement setting
7 forth all words used and describing in detail the actions, events,
8 scenes, and background sounds used in such advertisement together
9 with a listing of the names and addresses of persons portrayed or
10 heard to speak, if the advertisement is in or will be in a form in
11 which the advertised message is not fully revealed by a print copy
12 or photograph;

13 (3) a statement of when and where the advertisement
14 has been, is, or will be used;

15 (4) a completed physician advertising and
16 solicitation communication application form: and

17 (5) a check or money order payable to the Texas Medical
18 Board for the fee set by the board. Such fee shall be for the sole
19 purpose of defraying the expense of enforcing the rules related to
20 such advertisements.

21 (c) Except as provided in paragraph (e) of this section, a
22 physician shall file with the advertising review committee no later
23 than its first posting on the internet or other comparable network
24 of computers information concerning the physician's or physician's
25 firm's website. As used in this section, a "website" means a single
26 or multiple page file, posted on a computer server, which describes
27 a physician or law firm's practice or qualifications, to which

1 public access is provided through publication of a uniform resource
2 locator (URL). The filing shall include:

3 (1) the intended initial access page of a website;

4 (2) a completed physician advertising and
5 solicitation communication application form and;

6 (3) a check or money order payable to the Texas Medical
7 Board for the fee set by the board. Such fee shall be for the sole
8 purpose of defraying the expense of enforcing the rules related to
9 such websites.

10 (d) A physician who desires to secure an advance advisory
11 opinion, referred to as a request for pre-approval, concerning
12 compliance of a contemplated solicitation communication or
13 advertisement may submit to the Physician Advertising Review
14 Committee, not less than thirty (30) days prior to the date of
15 first dissemination, the material specified by this section or the
16 intended initial access page submitted pursuant to this section,
17 including the application form and required fee; provided however,
18 it shall not be necessary to submit a videotape or DVD if the
19 videotape or DVD has not then been prepared and the production
20 script submitted reflects in detail and accurately the actions,
21 events, scenes, and background sounds that will be depicted or
22 contained on such videotapes or DVDs, when prepared, as well as the
23 narrative transcript of the verbal and printed portions of such
24 advertisement. If a physician submits an advertisement or
25 solicitation communication for pre-approval, a finding of
26 noncompliance by the Advertising Review Committee is not binding in
27 a disciplinary proceeding or disciplinary action, but a finding of

1 compliance is binding in favor of the submitting physician as to all
2 materials actually submitted for pre-approval if the
3 representations, statements, materials, facts, and written
4 assurances received in connection therewith are true and are not
5 misleading. The finding of compliance constitutes admissible
6 evidence if offered by a party.

7 (e) The filing requirements of paragraphs (a), (b), and (c)
8 do not extend to any of the following materials, provided those
9 materials comply with other applicable law or board rule:

10 (1) an advertisement in the public media that contains
11 only part or all of the following information,

12 (i) the name of the physician or firm and
13 physicians associated with the firm, with office addresses,
14 electronic addresses, telephone numbers, office and telephone
15 service hours, telecopier numbers, and a designation of the
16 profession such as "doctor," "physician," "medical office," or
17 "firm";

18 (ii) the particular areas of law in which the
19 physician or firm specializes or possesses special competence;

20 (iii) the particular areas of law in which the
21 physician or firm practices or concentrates or to which it limits
22 its practice;

23 (iv) the date of licensure of the physician or
24 physicians by the Texas Medical Board and by other state medical
25 licensing boards;

26 (v) technical and professional licenses or
27 certifications granted by this state and other recognized licensing

- 1 or certifying authorities;
2 (vi) foreign language ability;
3 (vii) fields of medicine in which one or more
4 physicians are certified or designated, provided the statement of
5 this information is in compliance with other applicable law or
6 board rule;
7 (viii) identification of prepaid or group
8 medical plans in which the physician participates;
9 (ix) the acceptance or nonacceptance of credit
10 cards;
11 (x) any fee for initial consultation and fee
12 schedule;
13 (xi) other publicly available information
14 concerning medical issues, not prepared or paid for by the firm or
15 any of its physicians, such as news articles, legal articles,
16 editorial opinions, or other medical developments or events;
17 (xii) in the case of a website, links to other
18 websites;
19 (xiii) that the physician or firm is a sponsor of
20 a charitable, civic, or community program or event, or is a sponsor
21 of a public service announcement;
22 (xiv) any disclosure or statement required by
23 these rules; and
24 (xv) any other information specified from time to
25 time as promulgated by the board;
26 (2) an advertisement in the public media that:
27 (i) identifies one or more physicians or a firm

1 as a contributor to a specified charity or as a sponsor of a
2 specified charitable, community, or public interest program,
3 activity, or event; and

4 (ii) contains no information about the
5 physicians or firm other than names of the physicians or firm or
6 both, location of the medical offices, and the fact of the
7 sponsorship or contribution;

8 (3) a listing or entry in a regularly published
9 directory of physicians;

10 (4) an announcement card stating new or changed
11 associations, new offices, or similar changes relating to a
12 physician or firm, or a tombstone professional card;

13 (5) in the case of communications sent, delivered, or
14 transmitted to, rather than accessed by, intended recipients, a
15 newsletter, whether written, digital, or electronic, provided that
16 it is sent, delivered, or transmitted mailed only to:

17 (i) existing or former patients; or

18 (ii) other physicians or professionals.

19 (6) a solicitation communication that is not motivated
20 by or concerned with a particular past occurrence or event or a
21 particular series of past occurrences or events, and also is not
22 motivated by or concerned with the prospective patient's specific
23 existing legal problem of which the physician is aware;

24 (7) a solicitation communication if the physician's
25 use of the communication to secure professional employment was not
26 significantly motivated by a desire for, or by the possibility of
27 obtaining, pecuniary gain; or

1 (8) a solicitation communication that is requested by
2 the prospective patient.

3 (f) If requested by the Advertising Review Committee, a
4 physician shall promptly submit information to substantiate
5 statements or representations made or implied in any advertisement
6 in the public media and/or written solicitation communication by
7 which the physician seeks paid professional employment.

8 SECTION 3. Not later than December 1, 2009, the Texas
9 Medical Board shall adopt the rules necessary to implement Section
10 153.0021, Occupations Code, as added by this Act.

11 SECTION 4. (a) Notwithstanding Section 153.0021,
12 Occupations Code, as added by this Act, a physician is not required
13 to obtain the Texas Medical Board's approval to post the physician's
14 public access website on the Internet until June 1, 2010. The board
15 by rule may provide for staggered submission of Internet website
16 approval forms for approval of physician websites posted before
17 that date.

18 (b) A physician who, as of the effective date of this Act,
19 has posted a public access website regarding the physician's
20 practice on the Internet shall submit the application for approval
21 of the website required by Section 153.0021, Occupations Code, as
22 added by this Act, to the Texas Medical Board on renewal of the
23 physician's license to practice medicine.

24 SECTION 5. This Act takes effect September 1, 2009.