Texas Legislature Takes Steps to Protect Consumers from Misleading Healthcare Information: What Lawyers Need to Know

By Neil Issar | July 16, 2019

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It can be daunting for consumers to separate true advertising claims from false or misleading ones. This is especially true for advertising claims concerning drugs, medical devices, and other healthcare matters, as an estimated 80 million Americans have limited health literacy. This segment of the population has consistently demonstrated a poorer ability to comply with medication prescriptions and to interpret labels and health messages, and, as a result, is at risk for worse health outcomes and increased healthcare costs.

While agencies such as the Federal Trade Commission, Consumer Financial Protection Bureau, and Food and Drug Administration work together to regulate advertising directed to consumers, Texas recently took significant legislative steps to protect consumers from false and misleading healthcare information in advertising. The 86th Texas Legislature passed two bills that set their crosshairs on (1) television advertisements for legal services that may lead viewers to make unfounded healthcare decisions, and (2) advertising and information at freestanding emergency rooms that mislead consumers about pricing and insurance coverage.

Senate Bill 1189, filed by Senator Dawn Buckingham, imposes new limitations on attorneys and firms that advertise legal services for prescription drugs, medical devices, and other healthcare matters. Various independent organizations and public interest groups had raised concerns that advertising by attorneys was becoming alarmingly pervasive. A study found that advertisers for legal services and/or soliciting legal claims spent over $23 million to purchase more than 190,000 advertisements in Texas's largest media markets over a six-month period last year. In Dallas-Fort Worth alone, there were eleven times as many local legal service advertisements as advertisements for home centers and hardware stores. There were also indicators that many of these legal service advertisements contained unchecked, misleading, and/or inflammatory medical information, which could, for example, frighten consumers into discontinuing use of a necessary medication.

To address these concerns, Senate Bill 1189 amends the Texas Government Code to prohibit television advertisements for legal services from misrepresenting themselves as advertisements offering professional, medical, or government agency advice about medications or medical devices. It also prohibits attorneys from using phrases like "medical alert," "health alert," or "public service announcement," or saying a product has been recalled when it has not, and requires that advertisements related to prescription drugs advise viewers not to stop taking their medication without consulting a physician.

Excerpted from an article on the Dallas Association of Young Lawyers (DAYL) website. To read the full article, click here.

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