

OCCUPATIONS CODE

TITLE 3. HEALTH PROFESSIONS

SUBTITLE A. PROVISIONS APPLYING TO HEALTH PROFESSIONS GENERALLY

CHAPTER 102. SOLICITATION OF PATIENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. SOLICITING PATIENTS; OFFENSE. (a) A person commits an offense if the person knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the person:

(1) has previously been convicted of an offense under this section; or

(2) was employed by a federal, state, or local government at the time of the offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.002. REBUTTABLE PRESUMPTION. It is a rebuttable presumption that a person violated Section [102.001](#) if:

(1) the person refers or accepts a referral of a patient to an inpatient mental health facility or chemical dependency treatment facility;

(2) before the patient is discharged or furloughed from the facility, the person pays the referring person or accepts payment from the facility for outpatient services to be provided by the referring person after the patient is discharged or furloughed from the facility; and

(3) the referring person does not provide the outpatient services for which payment was made and does not return to the facility the payment received for those services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.003. FEDERAL LAW; CONSTRUCTION. Section 102.001 permits any payment, business arrangement, or payment practice permitted by 42 U.S.C. Section 1320a-7b(b) or any regulation adopted under that law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.004. APPLICABILITY TO ADVERTISING. Section 102.001 does not prohibit advertising, unless the advertising is:

- (1) false, misleading, or deceptive; or
- (2) not readily subject to verification, if the advertising claims professional superiority or the performance of a professional service in a superior manner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.005. APPLICABILITY TO CERTAIN ENTITIES. Section 102.001 does not apply to:

- (1) a licensed insurer;
- (2) a governmental entity, including:
 - (A) an intergovernmental risk pool established under Chapter 172, Local Government Code; and
 - (B) a system as defined by Section 1601.003, Insurance Code;
- (3) a group hospital service corporation;
- (4) a health maintenance organization that reimburses, provides, offers to provide, or administers hospital, medical, dental, or other health-related benefits under a health benefits plan for which it is the payor; or
- (5) a health care collaborative certified under Chapter 848, Insurance Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.542, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.05, eff. September 28, 2011.

Sec. 102.006. FAILURE TO DISCLOSE; OFFENSE. (a) A person

commits an offense if:

(1) the person, in a manner otherwise permitted under Section 102.001, accepts remuneration to secure or solicit a patient or patronage for a person licensed, certified, or registered by a state health care regulatory agency; and

(2) does not, at the time of initial contact and at the time of referral, disclose to the patient:

(A) the person's affiliation, if any, with the person for whom the patient is secured or solicited; and

(B) that the person will receive, directly or indirectly, remuneration for securing or soliciting the patient.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the person:

(1) has previously been convicted of an offense under this section; or

(2) was employed by a federal, state, or local government at the time of the offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.007. APPLICABILITY. (a) This subchapter does not apply to a health care information service that:

(1) provides its services to a consumer only by telephone communication on request initiated by the consumer and without charge to the consumer;

(2) provides information about health care providers to enable consumer selection of health care provider services without any direct influence by a health care provider on actual consumer selection of those services;

(3) in response to each consumer inquiry, on a nondiscriminatory basis, provides information identifying health care providers who substantially meet the consumer's detailed criteria based on consumer responses to standard questions designed to elicit a consumer's criteria for a health care provider, including criteria concerning location of the practice, practice specialties, costs and payment policies, acceptance of insurance

coverage, general background and practice experience, and various personal characteristics;

(4) does not attempt through its standard questions for solicitation of consumer criteria or through any other means to lead a consumer to select or consider selection of a particular health care provider for health care provider services;

(5) identifies to a consumer:

(A) all health care providers substantially meeting the consumer's stated criteria who are located within the zip code area in which the consumer elects to obtain services from a health care provider; or

(B) all health care providers substantially meeting the consumer's stated criteria who are located in zip code areas in the closest proximity to the elected zip code area if no health care provider substantially meeting the consumer's criteria is located within that zip code area;

(6) discloses to each consumer the relationship between the health care information service and health care providers participating in its services;

(7) does not provide or represent itself as providing diagnostic or counseling services or assessment of illness or injury and does not make any promise of cure or guarantee of treatment;

(8) does not provide or arrange for transportation of a consumer to or from the location of a health care provider;

(9) does not limit the scope of or direct its advertising or other marketing of its services to a particular health care provider specialty, to a particular segment of the population, or to persons suffering from a particular illness, condition, or infirmity;

(10) charges to and collects a fee from a health care provider participating in its services that is set in advance, is consistent with the fair market value for those information services, and is not based on the potential value of a patient to a health care provider or on the value of or a percentage of the value of a professional service provided by the health care provider;

(11) does not limit participation by a health care

provider in its services to a particular health care specialty or to a particular service provided by a health care provider;

(12) does not limit participation by a health care provider in its services for a reason other than:

(A) failure to have a current license without limitation to practice in this state;

(B) failure to maintain professional liability insurance while participating in the service;

(C) significant dissatisfaction of consumers of the health care information service that is documented and can be proved;

(D) a decision by a peer review committee that the health care provider has failed to meet prescribed standards or has not acted in a professional or ethical manner; or

(E) termination of the contract between the health care provider and the health care information service by either party under the terms of the contract;

(13) maintains a customer service department to handle complaints and answer questions for consumers;

(14) maintains a customer follow-up system to monitor consumer satisfaction; and

(15) does not use, maintain, distribute, or provide for any purpose any information that will identify a particular consumer, such as a name, address, or telephone number, obtained from a consumer seeking its services other than for the purposes of:

(A) providing the information to the health care provider with whom an appointment is made;

(B) performing administrative functions necessary to operate the health care information service;

(C) providing directly to a consumer, at the request of that consumer on that consumer's initial contact with the health care information service, information relating to health-related support groups or providers of health-care-related services or equipment within the area of interest requested by the consumer; or

(D) conducting analytical research on data obtained through provision of services and preparing statistical

reports that generally analyze that data but do not in any manner identify one or more specific consumers.

(b) In this section:

(1) "Health care information service" means a person who provides information to a consumer regarding health care providers that can enable the consumer to select one or more health care providers to furnish health care services.

(2) "Health care provider" means a person licensed, certified, or registered by a state health care regulatory agency other than:

(A) a mental health facility as defined by Section 571.003, Health and Safety Code; or

(B) a treatment facility as defined by Section 464.001, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.008. DISCIPLINARY ACTION. A violation of Section 102.001 or 102.006 is grounds for disciplinary action by the regulatory agency that issued a license, certification, or registration to the person who committed the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.009. INJUNCTION. (a) The attorney general or the appropriate district or county attorney, in the name of the state, may institute and conduct an action in a district court of Travis County or of a county in which any part of the violation occurs for an injunction or other process against a person who is violating this subchapter.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.010. CIVIL PENALTIES. (a) A person who violates this subchapter is subject to a civil penalty of not more than \$10,000 for each day of violation and each act of violation. In determining the amount of the civil penalty, the court shall

consider:

- (1) the person's previous violations;
- (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (3) whether the health and safety of the public was threatened by the violation;
- (4) the demonstrated good faith of the person; and
- (5) the amount necessary to deter future violations.

(b) The attorney general or the appropriate district or county attorney, in the name of the state, may institute and conduct an action authorized by this section in a district court of Travis County or of a county in which any part of the violation occurs.

(c) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.011. SUIT FOR INJUNCTIVE RELIEF OR ASSESSMENT OF CIVIL PENALTY. (a) The party bringing a suit under this subchapter may:

- (1) combine a suit to assess and recover civil penalties with a suit for injunctive relief; or
- (2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(b) The party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, injunctive relief, or both, including investigation costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses.

(c) The civil penalty and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. HEALING ARTS

Sec. 102.051. SOLICITING PATIENTS; OFFENSE. (a) A person commits an offense if the person:

(1) practices the art of healing with or without the use of medicine; and

(2) employs or agrees to employ, pays or promises to pay, or rewards or promises to reward another for soliciting or securing a patient or patronage.

(b) A person commits an offense if the person accepts or agrees to accept anything of value for soliciting or securing a patient or patronage for a person who practices the art of healing with or without the use of medicine.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200. Each violation of this section is a separate offense.

(d) For purposes of this section, a person who practices the art of healing includes a masseur and an optometrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.052. APPLICABILITY TO PHYSICIANS. This subchapter does not apply to a practitioner of medicine subject to regulation under Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.053. EXCEPTION FOR CERTAIN ADVERTISING. Section [102.051](#) does not prohibit:

(1) placement in a newspaper of an advertisement of the person's profession, business, or place of business; or

(2) advertisement by handbill and payment for services in distributing the handbill.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.054. ACCESSIBILITY AND USE OF WITNESS TESTIMONY. (a) A person is not exempt from giving testimony in a proceeding to enforce Section [102.051](#).

(b) The testimony a person gives in a proceeding to enforce Section [102.051](#) may not be used against that person in any criminal action or proceeding. A criminal action or proceeding may not be

brought against a person because of the testimony given by that person in a proceeding to enforce Section [102.051](#).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.