

## Bringing transparency to lawyer health care advertising, Texas lawmakers hear testimony on HB 2251

By David Yates | Mar 27, 2019



AUSTIN - Any daytime television watcher has most likely seen a lawyer advertisement warning viewers of the dangers of a prescription drug. Concerned such ads might lead some to stop taking their meds, Texas lawmakers are now considering a bill that would bring transparency.

The House Judiciary and Civil Jurisprudence Committee heard testimony on House Bill 2251 on March 25.

Rep. Giovanni Capriglione, R-Southlake, told committee members that he introduced HB 2251, which seeks to add disclosures to attorney health care advertising, because he's a proponent of transparency.

Capriglione said his bill provides for certain "commonsense disclosures" so potential clients hooked by lawyer health care ads will be better informed.

Capriglione believes viewers should know who is paying for the ad, and whether the lawyer or law firm featured in the ad will actually be handling the case. And most importantly, the representative believes viewers should know that the lawyer ad is not actually providing medical advice.

The bill would require advertisements to properly warn patients that it is dangerous to stop taking a prescribed medication before consulting with a physician.

"Many of us simply ignore these ads, I do, but for Texans that actually take (prescription drugs), the ads can be confusing and misleading and sometimes a cause for needless anxiety," Capriglione said. "That's because in order to catch people's attention and compel them to sign up for legal services, the ads sometimes use scare tactics, such as sometimes claiming a drug has been recalled when it hasn't or is under investigation by the FDA when it isn't.

"This has led people to stop taking their critical medications without consulting their doctors, leading to serious harm. The bottom line is that a lawyer is not a doctor."

A 2016 survey conducted on behalf of Texans Against Lawsuit Abuse found that 82 percent of doctors believe that such ads can lead to patients not taking their medications as prescribed.



Rep. Giovanni Capriglione,  
R-Southlake

The survey also found that 66 percent of doctors say patients have questioned their recommended course of treatment, citing concerns about claims they saw in a lawsuit ad.

If passed, HB 2251 would grant authority to impose fines on lawyers who market deceptive ads. The bill does not stop lawyer advertising or keep a lawsuit from being filed.

Speaking against the bill was Mike Gallagher, a Houston attorney who represents numerous counties in opioid litigation.

Gallagher told committee members that there are aspects of lawyer health care advertising that do call into question as to whether the ads “reflect favorably on our profession.”

“And that’s a concern we all share,” Gallagher said. “However, there are certain guarantees that apply to such things, like the First Amendment, free speech.”

He recommended that the committee proceed carefully because of the “sanctity” of the First Amendment.

Texas television viewers were inundated by more than 190,000 advertisements for legal services in the state’s three largest media markets over a six-month period last year, according to a recent report by the American Tort Reform Association.

The study examined the prevalence of legal advertising in Houston, Dallas, and San Antonio, and found that legal services accounted for a staggering \$23.4 million in ad buys during the period studied.

Comparing legal services ads to other common ad categories, the study found that viewers in Houston saw more than 19 lawsuit ads for every pizza ad, while San Antonio viewers saw more than 11 times as many legal ads than ads for hardware stores.

*A companion bill, SB 1189, was filed by Sen. Dawn Buckingham of Lakeway.*