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ORIGINAL

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VIA HAND DELIVERY

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex I)
600 Pennsylvania Avenue, NW
Washington, DC 20580



RE: Comments regarding online advertising in the medical profession

Dear Sir or Madam:

Since the Federal Trade Commission issued its business guidance document, *Dot.com Disclosures: Information About Online Advertising*, in 2000, there has been a steady rise in the number of consumers who turn to the Internet to address their health care needs. Recent studies indicate that young adults and senior citizens account for the dramatic turn to the Web. Naturally, the number of Web sites marketing healthcare information and services to consumers has increased tremendously. One recent study established that there are now more than thirty such sites available to the public. The content, quality and accuracy of these sites vary considerably, putting the public at considerable risk.

The Richmond Academy of Medicine, a non-profit organization representing 1,700 medical professionals, based in Richmond, Virginia, has received a significant number of complaints from physicians and individual consumers regarding online physician directories and the advertising associated with them. We believe many of these sites are having a direct and negative impact on patients and interfere with the timely delivery of healthcare services. For these reasons, we are submitting our comments in the hope that the Federal Trade Commission will include guidance for online marketers to patients that:

- Puts patient safety above commercial gain;
- Ensures patient confidentiality;
- Demands accuracy of information, and
- Fosters rather than impedes the integrity of the physician-patient relationship.

Patient Safety

There are many physician-rating Web sites that purport to assist patients in need of healthcare services by guiding them to a physician who can meet their needs. We believe the FTC should scrutinize these commercial sites to determine how they “rank” physicians when a request for a specific medical specialty is made or a specific medical condition is noted. It is too common to find physicians identified who are deceased, retired or no longer live within the community. It is not uncommon to find physicians identified with incorrect office locations, erroneous credentials, and with a practice that no longer exists. It is clear that some Web sites purchase stale data and simply present it without any prominent disclaimer that the information is unverified, out-of-date, and may contain errors.

We also question whether the sites adequately inform the consumer about how physician “rankings” are determined. Does the consumer receive adequate notification that some of these placements are nothing more than paid advertising?

We note that many sites appear to present themselves as an independent source of information for patients when their content is, at least in part, paid advertising. Such sites are clearly not independent. In this regard, the proliferation of purported “physician referral sites” is part of a wider problem with Internet-based commerce now reportedly under investigation by the FTC — that is, the commission’s investigation of whether certain search engines use dominance in Web searches to give their commercial services an unfair advantage.

Of particular concern to our medical society is the level of confidentiality of commercial sites. In particular, do phone calls or emails to the physicians get channeled through the site rather than to the office of the listed physician? Is this data sold to third parties who have a commercial interest in selling a product or service to the individual? Is the patient adequately informed that any confidential information provided to the third party may not be protected under HIPAA?

An additional concern is the timeliness of the transfer of information. Given this steerage through a web site, we question whether patients who are attempting to contact a physician through the site rather than directly face significant delays in receiving timely and appropriate care —delays that, according to our concerned physicians, could have dire consequences. As one Richmond practice wrote me in regard to a well-known Internet site where the referral center shuts down at 7 p.m., “This could be extremely risky for after-hour emergencies, which, for our practice, are sick or injured infants and children.” In other words, by setting up this new form of medical referrals for commercial purposes, certain Internet sites have, intentionally or unintentionally, inserted themselves between doctors and the patients they serve.

In summing up these two concerns, we ask the following questions:

- Has the site posted prominent disclaimers that the patient easily sees that informs the patient that information conveyed to the site will not be protected in the same manner as if it were conveyed directly to the physician’s office?
- Has the site posted prominently on the first page that calls or emails to the site may not be responded to until the next business day (when a patient may need an immediate contact

Physician Patient Relationship

When a patient contacts a physician through a Web site that markets itself as a listing service, rather than directly with a physician, a true physician-patient relationship has not been established in the literal or legal sense of the word. Patient communications through such third-party Web sites may not be protected under state or federal law under the physician-patient privilege. Furthermore, the patient cannot be assured that the physician of his or her choice will be the one reviewing the communication. More than likely a non-physician unaffiliated with the chosen physician will be reviewing the communication initially. In addition, the communication will not have the protections of confidentiality inherent in a physician-patient relationship.

Inadequate/Inaccurate Information Used In Physician Selection

There are at least 33 Web sites that offer physician rankings or listings. Patients who turn to the Internet to find a new physician should be able to rely on the information presented by sites purporting to provide such information. Web sites that provide information on physicians should have to take reasonable steps to ensure that information is accurate or at a minimum request permission of the physician before posting his/her credentials and contact information. In many cases, we have found such information to be inaccurate and slipshod, creating confusion for patients and harm to the public image of practitioners. Web sites that choose to rank physicians, or that list physicians, should prominently display the basis for such rankings, including any payments the Web site receives for a more prominent ranking.

Use of Name or Image

Are Web sites, without a physician's consent, using that physician's name or image to market the site? Are sites using physician professional standing to lure additional advertising dollars or to suggest an alliance or affiliation where none may exist? In many cases, a physician's name is being used as a meta tag to force web traffic to a specific site, without the physician's consent. Such use of a physician's name or image can easily mislead consumers searching for a physician by creating the impression of a relationship between that physician and the site that does not exist.

We would be happy to answer any questions FTC staff may have about our comments.

Sincerely,

Deborah Love