

**ASSEMBLY BILL**

**No. 916**

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**Introduced by Assembly Member Eggman**

February 22, 2013

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An act to amend Section 651 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 916, as introduced, Eggman. Healing arts: false or misleading advertising.

Existing law provides for the licensure and regulation of the practice of various healing arts practitioners by boards within the Department of Consumer Affairs. Existing law makes it unlawful for those practitioners to disseminate a false, fraudulent, misleading, or deceptive statement and defines those terms for its purposes. Existing law prohibits a physician and surgeon from making a statement in public communications that he or she is board certified unless that board meets certain requirements.

This bill would further prohibit the use of additional terms by a physician or surgeon with respect to board of certification, except as provided. The bill would also make findings and declarations regarding the need for legislation pertaining to misleading advertisements and statements by physicians and surgeons.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Existing law prohibits a physician and surgeon from  
4 advertising in public communications that he or she is board  
5 certified unless that board is a member of the American Board of  
6 Medical Specialties, a board or association with equivalent  
7 requirements approved by the Medical Board of California, or a  
8 board or association with an Accreditation Council for Graduate  
9 Medical Education-approved postgraduate training program that  
10 provides complete training in that specialty or subspecialty.

11 (b) The intent of these laws is to protect the public from being  
12 misled or endangered as a result of false or misleading  
13 advertisements by practitioners who claim board certification by  
14 boards not meeting the above requirements, and to enhance the  
15 quality of care and safety afforded to patients.

16 (c) Unfortunately, these laws have been widely circumvented  
17 by the dissemination of public communications by physicians and  
18 surgeons, or on their behalf by boards that do not meet the above  
19 requirements, that do not include the exact phrase “board certified”  
20 but contain similar terms that strongly imply board certification.

21 (d) Further clarification of existing law is needed to further  
22 protect the public and to ensure that patients better understand the  
23 training and qualifications possessed by physicians and surgeons  
24 from whom they are seeking care.

25 SEC. 2. Section 651 of the Business and Professions Code is  
26 amended to read:

27 651. (a) It is unlawful for any person licensed under this  
28 division or under any initiative act referred to in this division to  
29 disseminate or cause to be disseminated any form of public  
30 communication containing a false, fraudulent, misleading, or  
31 deceptive statement, claim, or image for the purpose of or likely  
32 to induce, directly or indirectly, the rendering of professional  
33 services or furnishing of products in connection with the  
34 professional practice or business for which he or she is licensed.  
35 A “public communication” as used in this section includes, but is  
36 not limited to, communication by means of mail, television, radio,  
37 motion picture, newspaper, book, list or directory of healing arts  
38 practitioners, Internet, or other electronic communication.

1 (b) A false, fraudulent, misleading, or deceptive statement,  
2 claim, or image includes a statement or claim that does any of the  
3 following:

4 (1) Contains a misrepresentation of fact.

5 (2) Is likely to mislead or deceive because of a failure to disclose  
6 material facts.

7 (3) (A) Is intended or is likely to create false or unjustified  
8 expectations of favorable results, including the use of any  
9 photograph or other image that does not accurately depict the  
10 results of the procedure being advertised or that has been altered  
11 in any manner from the image of the actual subject depicted in the  
12 photograph or image.

13 (B) Use of any photograph or other image of a model without  
14 clearly stating in a prominent location in easily readable type the  
15 fact that the photograph or image is of a model is a violation of  
16 subdivision (a). For purposes of this paragraph, a model is anyone  
17 other than an actual patient, who has undergone the procedure  
18 being advertised, of the licensee who is advertising for his or her  
19 services.

20 (C) Use of any photograph or other image of an actual patient  
21 that depicts or purports to depict the results of any procedure, or  
22 presents “before” and “after” views of a patient, without specifying  
23 in a prominent location in easily readable type size what procedures  
24 were performed on that patient is a violation of subdivision (a).  
25 Any “before” and “after” views (i) shall be comparable in  
26 presentation so that the results are not distorted by favorable poses,  
27 lighting, or other features of presentation, and (ii) shall contain a  
28 statement that the same “before” and “after” results may not occur  
29 for all patients.

30 (4) Relates to fees, other than a standard consultation fee or a  
31 range of fees for specific types of services, without fully and  
32 specifically disclosing all variables and other material factors.

33 (5) Contains other representations or implications that in  
34 reasonable probability will cause an ordinarily prudent person to  
35 misunderstand or be deceived.

36 (6) Makes a claim either of professional superiority or of  
37 performing services in a superior manner, unless that claim is  
38 relevant to the service being performed and can be substantiated  
39 with objective scientific evidence.

1 (7) Makes a scientific claim that cannot be substantiated by  
2 reliable, peer reviewed, published scientific studies.

3 (8) Includes any statement, endorsement, or testimonial that is  
4 likely to mislead or deceive because of a failure to disclose material  
5 facts.

6 (c) Any price advertisement shall be exact, without the use of  
7 phrases, including, but not limited to, “as low as,” “and up,”  
8 “lowest prices,” or words or phrases of similar import. Any  
9 advertisement that refers to services, or costs for services, and that  
10 uses words of comparison shall be based on verifiable data  
11 substantiating the comparison. Any person so advertising shall be  
12 prepared to provide information sufficient to establish the accuracy  
13 of that comparison. Price advertising shall not be fraudulent,  
14 deceitful, or misleading, including statements or advertisements  
15 of bait, discount, premiums, gifts, or any statements of a similar  
16 nature. In connection with price advertising, the price for each  
17 product or service shall be clearly identifiable. The price advertised  
18 for products shall include charges for any related professional  
19 services, including dispensing and fitting services, unless the  
20 advertisement specifically and clearly indicates otherwise.

21 (d) Any person so licensed shall not compensate or give anything  
22 of value to a representative of the press, radio, television, or other  
23 communication medium in anticipation of, or in return for,  
24 professional publicity unless the fact of compensation is made  
25 known in that publicity.

26 (e) Any person so licensed may not use any professional card,  
27 professional announcement card, office sign, letterhead, telephone  
28 directory listing, medical list, medical directory listing, or a similar  
29 professional notice or device if it includes a statement or claim  
30 that is false, fraudulent, misleading, or deceptive within the  
31 meaning of subdivision (b).

32 (f) Any person so licensed who violates this section is guilty of  
33 a misdemeanor. A bona fide mistake of fact shall be a defense to  
34 this subdivision, but only to this subdivision.

35 (g) Any violation of this section by a person so licensed shall  
36 constitute good cause for revocation or suspension of his or her  
37 license or other disciplinary action.

38 (h) Advertising by any person so licensed may include the  
39 following:

40 (1) A statement of the name of the practitioner.

1 (2) A statement of addresses and telephone numbers of the  
2 offices maintained by the practitioner.

3 (3) A statement of office hours regularly maintained by the  
4 practitioner.

5 (4) A statement of languages, other than English, fluently spoken  
6 by the practitioner or a person in the practitioner’s office.

7 (5) (A) A statement that the practitioner is certified by a private  
8 or public board or agency or a statement that the practitioner limits  
9 his or her practice to specific fields.

10 (B) A statement of certification by a practitioner licensed under  
11 Chapter 7 (commencing with Section 3000) shall only include a  
12 statement that he or she is certified or eligible for certification by  
13 a private or public board or parent association recognized by that  
14 practitioner’s licensing board.

15 (C) A physician and surgeon licensed under Chapter 5  
16 (commencing with Section 2000) by the Medical Board of  
17 California may include a statement that he or she limits his or her  
18 practice to specific fields, but shall not include a statement that he  
19 or she is certified or eligible for certification by a private or public  
20 board or parent association, including, but not limited to, a  
21 multidisciplinary board or association, unless that board or  
22 association is (i) an American Board of Medical Specialties  
23 member board, (ii) a board or association with equivalent  
24 requirements approved by that physician and surgeon’s licensing  
25 board, or (iii) a board or association with an Accreditation Council  
26 for Graduate Medical Education approved postgraduate training  
27 program that provides complete training in that specialty or  
28 subspecialty. A physician and surgeon licensed under Chapter 5  
29 (commencing with Section 2000) by the Medical Board of  
30 California who is certified by an organization other than a board  
31 or association referred to in clause (i), (ii), or (iii) shall not use the  
32 term “board certified” in reference to that certification, unless the  
33 physician and surgeon is also licensed under Chapter 4  
34 (commencing with Section 1600) and the use of the term “board  
35 certified” in reference to that certification is in accordance with  
36 subparagraph (A). A physician and surgeon licensed under Chapter  
37 5 (commencing with Section 2000) by the Medical Board of  
38 California who is certified by a board or association referred to in  
39 clause (i), (ii), or (iii) shall not use *any of the term terms “board,”*  
40 *“certified,” “certification,” or “board certified” unless the full*

1 name of the certifying board is also used and given comparable  
2 prominence with the ~~term~~ *terms* “board,” “certified,”  
3 “certification,” or “board certified” in the statement *and unless*  
4 *the term or terms are used in reference to a certifying board*  
5 *meeting at least one of the criteria described in clause (i), (ii), or*  
6 *(iii).*

7 For purposes of this subparagraph, a “multidisciplinary board  
8 or association” means an educational certifying body that has a  
9 psychometrically valid testing process, as determined by the  
10 Medical Board of California, for certifying medical doctors and  
11 other health care professionals that is based on the applicant’s  
12 education, training, and experience.

13 ~~For purposes of the term “board certified,” as used in this~~  
14 ~~subparagraph, the terms “board” and “association” mean an~~  
15 ~~organization that is an American Board of Medical Specialties~~  
16 ~~member board, an organization with equivalent requirements~~  
17 ~~approved by a physician and surgeon’s licensing board, or an~~  
18 ~~organization with an Accreditation Council for Graduate Medical~~  
19 ~~Education approved postgraduate training program that provides~~  
20 ~~complete training in a specialty or subspecialty.~~

21 The Medical Board of California shall adopt regulations to  
22 establish and collect a reasonable fee from each board or  
23 association applying for recognition pursuant to this subparagraph.  
24 The fee shall not exceed the cost of administering this  
25 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the  
26 Statutes of 1990, this subparagraph shall become operative July  
27 1, 1993. However, an administrative agency or accrediting  
28 organization may take any action contemplated by this  
29 subparagraph relating to the establishment or approval of specialist  
30 requirements on and after January 1, 1991.

31 (D) A doctor of podiatric medicine licensed under Chapter 5  
32 (commencing with Section 2000) by the Medical Board of  
33 California may include a statement that he or she is certified or  
34 eligible or qualified for certification by a private or public board  
35 or parent association, including, but not limited to, a  
36 multidisciplinary board or association, if that board or association  
37 meets one of the following requirements: (i) is approved by the  
38 Council on Podiatric Medical Education, (ii) is a board or  
39 association with equivalent requirements approved by the  
40 California Board of Podiatric Medicine, or (iii) is a board or

1 association with the Council on Podiatric Medical Education  
2 approved postgraduate training programs that provide training in  
3 podiatric medicine and podiatric surgery. A doctor of podiatric  
4 medicine licensed under Chapter 5 (commencing with Section  
5 2000) by the Medical Board of California who is certified by a  
6 board or association referred to in clause (i), (ii), or (iii) shall not  
7 use the term “board certified” unless the full name of the certifying  
8 board is also used and given comparable prominence with the term  
9 “board certified” in the statement. A doctor of podiatric medicine  
10 licensed under Chapter 5 (commencing with Section 2000) by the  
11 Medical Board of California who is certified by an organization  
12 other than a board or association referred to in clause (i), (ii), or  
13 (iii) shall not use the term “board certified” in reference to that  
14 certification.

15 For purposes of this subparagraph, a “multidisciplinary board  
16 or association” means an educational certifying body that has a  
17 psychometrically valid testing process, as determined by the  
18 California Board of Podiatric Medicine, for certifying doctors of  
19 podiatric medicine that is based on the applicant’s education,  
20 training, and experience. For purposes of the term “board certified,”  
21 as used in this subparagraph, the terms “board” and “association”  
22 mean an organization that is a Council on Podiatric Medical  
23 Education approved board, an organization with equivalent  
24 requirements approved by the California Board of Podiatric  
25 Medicine, or an organization with a Council on Podiatric Medical  
26 Education approved postgraduate training program that provides  
27 training in podiatric medicine and podiatric surgery.

28 The California Board of Podiatric Medicine shall adopt  
29 regulations to establish and collect a reasonable fee from each  
30 board or association applying for recognition pursuant to this  
31 subparagraph, to be deposited in the State Treasury in the Podiatry  
32 Fund, pursuant to Section 2499. The fee shall not exceed the cost  
33 of administering this subparagraph.

34 (6) A statement that the practitioner provides services under a  
35 specified private or public insurance plan or health care plan.

36 (7) A statement of names of schools and postgraduate clinical  
37 training programs from which the practitioner has graduated,  
38 together with the degrees received.

39 (8) A statement of publications authored by the practitioner.

1 (9) A statement of teaching positions currently or formerly held  
2 by the practitioner, together with pertinent dates.

3 (10) A statement of his or her affiliations with hospitals or  
4 clinics.

5 (11) A statement of the charges or fees for services or  
6 commodities offered by the practitioner.

7 (12) A statement that the practitioner regularly accepts  
8 installment payments of fees.

9 (13) Otherwise lawful images of a practitioner, his or her  
10 physical facilities, or of a commodity to be advertised.

11 (14) A statement of the manufacturer, designer, style, make,  
12 trade name, brand name, color, size, or type of commodities  
13 advertised.

14 (15) An advertisement of a registered dispensing optician may  
15 include statements in addition to those specified in paragraphs (1)  
16 to (14), inclusive, provided that any statement shall not violate  
17 subdivision (a), (b), (c), or (e) or any other section of this code.

18 (16) A statement, or statements, providing public health  
19 information encouraging preventative or corrective care.

20 (17) Any other item of factual information that is not false,  
21 fraudulent, misleading, or likely to deceive.

22 (i) Each of the healing arts boards and examining committees  
23 within Division 2 shall adopt appropriate regulations to enforce  
24 this section in accordance with Chapter 3.5 (commencing with  
25 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
26 Code.

27 Each of the healing arts boards and committees and examining  
28 committees within Division 2 shall, by regulation, define those  
29 efficacious services to be advertised by businesses or professions  
30 under their jurisdiction for the purpose of determining whether  
31 advertisements are false or misleading. Until a definition for that  
32 service has been issued, no advertisement for that service shall be  
33 disseminated. However, if a definition of a service has not been  
34 issued by a board or committee within 120 days of receipt of a  
35 request from a licensee, all those holding the license may advertise  
36 the service. Those boards and committees shall adopt or modify  
37 regulations defining what services may be advertised, the manner  
38 in which defined services may be advertised, and restricting  
39 advertising that would promote the inappropriate or excessive use  
40 of health services or commodities. A board or committee shall not,

1 by regulation, unreasonably prevent truthful, nondeceptive price  
2 or otherwise lawful forms of advertising of services or  
3 commodities, by either outright prohibition or imposition of  
4 onerous disclosure requirements. However, any member of a board  
5 or committee acting in good faith in the adoption or enforcement  
6 of any regulation shall be deemed to be acting as an agent of the  
7 state.

8 (j) The Attorney General shall commence legal proceedings in  
9 the appropriate forum to enjoin advertisements disseminated or  
10 about to be disseminated in violation of this section and seek other  
11 appropriate relief to enforce this section. Notwithstanding any  
12 other provision of law, the costs of enforcing this section to the  
13 respective licensing boards or committees may be awarded against  
14 any licensee found to be in violation of any provision of this  
15 section. This shall not diminish the power of district attorneys,  
16 county counsels, or city attorneys pursuant to existing law to seek  
17 appropriate relief.

18 (k) A physician and surgeon or doctor of podiatric medicine  
19 licensed pursuant to Chapter 5 (commencing with Section 2000)  
20 by the Medical Board of California who knowingly and  
21 intentionally violates this section may be cited and assessed an  
22 administrative fine not to exceed ten thousand dollars (\$10,000)  
23 per event. Section 125.9 shall govern the issuance of this citation  
24 and fine except that the fine limitations prescribed in paragraph  
25 (3) of subdivision (b) of Section 125.9 shall not apply to a fine  
26 under this subdivision.

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