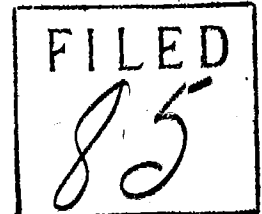


BOARD OF HEALTH: Soliciting patronage by agents does
not include advertising.
REVOCATION OF LICENSE:

January 25, 1945

Dr. James Stewart, Secretary
State Board of Health of Missouri
Jefferson City, Missouri

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Dear Sir:

We have for answer your opinion request of January
16, 1945, which is as follows:

"I hereby request your opinion upon the
following question: Does advertising by
a physician in newspapers or magazines,
or by the distribution of handbills or
other advertising matters constitute
'Soliciting Patronage by Agents' as set
out in Section 9990, Revised Statutes of
Missouri, 1939, and would the State Board
of Health have authority to institute pro-
ceedings looking to the revocation of such
physicians licenses under this portion of
Section 9990."

Section 9990, R. S. Mo. 1939, provides:

"The board may refuse to license individuals
of bad moral character, or persons guilty of
unprofessional or dishonorable conduct, and
they may revoke licenses, or other rights to
practice, however derived, for like causes,
and in cases where the license has been
granted upon false and fraudulent statements,
after giving the accused an opportunity to
be heard in his defense before the board as
hereinafter provided. Habitual drunkenness,
drug habit or excessive use of narcotics, or
producing criminal abortion, or soliciting

patronage by agents, shall be deemed unprofessional and dishonorable conduct within the meaning of this section. * * *

Webster's New International Dictionary, Second Edition, Unabridged, sets forth the several meanings of the words "advertise" and "solicit" and the meaning of the word "advertise" which applies here is as follows:

"To give notice or information; specif., to issue statements, requests, etc., usually in print, to inform or interest the public."

The meaning of the word "solicit" which is most applicable here is as follows:

"To make petition to; to entreat; importune; as, to solicit the king for relief; now, often, to approach with a request or plea, as in selling, begging, etc.; as to solicit one's neighbors for contributions."

In the case of In Re Owen, a North Carolina case, 177 S. E. 403, a dentist was charged (1) by himself and by another with soliciting professional business as a practitioner of dentistry by running paid advertisements, and/or solicitation for professional business in the Asheville Citizen; and that (2) by himself, or another, soliciting professional business by advertisements upon the buildings in the City of Asheville in which city the said dentist had his offices, said signs or advertisements soliciting professional business all being painted in yellow and black colors, and of large dimensions.

The North Carolina statute provided:

"Whenever it shall appear to the North Carolina state board of dental examiners that any licensed dentist practicing in the State has been guilty * * * of false

notice, advertisement, publication, or circulation of false claims, or fraudulent misleading statements of his art, skill, or knowledge, or of his methods of treatment or practice, * * * or has by himself or another solicited professional business the board shall revoke the license of such person."

The North Carolina court held:

"Advertising or the circulation of statements, without the taint of falsity or fraud, either by newspaper or sign, although paid for, cannot be construed as a violation of the statute. Advertising and soliciting are not synonymous terms. If such were so, every dentist who inserted a professional card in a registry, directory, or other publication, and paid for such insertion, or who placed upon the window or door of his office, or upon the wall of the building in which his office is located, his name, followed by the word 'dentist,' would subject himself to an accusation that might lead to the revocation of his license. * * * * *"

The court said further:

"We do not pass upon the ethics of the advertising resorted to by the respondent in this case, but, under the statute as drawn, in the absence of any allegation of falsity or fraud, we are constrained to hold that judgment below is erroneous. If the North Carolina board of dental examiners desire to have further limited the nature and extent of advertising to which members of their profession may lawfully resort, their remedy lies with the Legislature and not

Dr. James Stewart

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the courts. The lawmaking branch of the government, if in its wisdom it saw fit, might make unlawful any kind of advertising by members of the dental profession, whether false or otherwise, but as yet it has not done so."

CONCLUSION

It is, therefore, the opinion of this Department that inasmuch as the word "soliciting" as used in the statute is not synonymous with "advertising" the phrase "soliciting patronage by agents" would not cover advertising by a physician in newspapers or magazines, or by the distribution of handbills, or other advertising matters.

Respectfully submitted,

A. V. OWSLEY
Assistant Attorney General

APPROVED:

HARRY H. KAY
(Acting) Attorney General

AVO:CP