

REPRESENTATIVE KIM BRIMER



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RQ-0399-9C

June 29, 2001

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OPINION COMMITTEE

Ms. Susan Gusky
Chair, Opinions Committee
Office of Attorney General
209 West 14th Street
Austin, TX 78711

FILE # ML-42059-01
I.D. # 42059

Dear Ms. Gusky:

A constituent of Rep. Brian McCall's has requested a formal opinion from the Office of the Attorney General. Please accept this as my request. I thank you in advance for your timely assistance.

The request can be separated into two (2) related, but separate questions:

- QUESTION 1:** Is the legislative ban against health care profession advertisement that contains testimonials constitutional? In other words, does the legislature have the authority to enact Texas Occupation Code Section 101.201 (b)?
- QUESTION 2:** Is there a legal difference or significance as to who provides the testimony (i.e. - "doctor" versus "actual patient" versus "paid actor", etc.)?

Please focus the opinion on the apparent conflict between Section 101.201 and the well established free speech protections afforded by the First Amendment to the U.S. Constitution. Please clarify the bounds a health care professional must stay within to satisfy the 3-prong *Went for It, Inc* test (515 U.S. at 624 (1995).

Again, thank you for your assistance.

Cordially,

Kim Brimer
State Representative

cc: Rep. Brian McCall



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