

CAUSE NO.

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
	§	TRAVIS COUNTY, TEXAS
VS.	§	
	§	
HEALTH SCREEN SPECIALISTS OF	§	
SAN ANTONIO, INC. d/b/a/	HEALTH	§
SCREEN SPECIALISTS, and RICHARD	§	
REUSCH, Individually,	§	
Defendants.	§	_____ JUDICIAL DISTRICT

FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General Greg Abbott (“State”), and Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS, and RICHARD REUSCH, individually, having consented to the entry of this Final Judgment and Permanent Injunction, and before any testimony is taken in this case and without Defendants admitting to any violations of the Texas Food, Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE ANN. §431.001 *et seq.* (“TFDCA”) or the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (“DTPA”); or any other law, have jointly moved that the Court enter this Judgment.

HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS, and RICHARD REUSCH, individually, consent and agree to the entry of this Judgment and agree that the terms of said agreement are fair, just and equitable. Defendants further agree that Plaintiff’s execution of this Judgment does not constitute an approval by the Plaintiff of their business practices.

HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH

SCREEN SPECIALISTS and RICHARD REUSCH, individually, stipulate that the ultrasound devices **owned and used by them**, are prescription devices as cleared for marketing by the Federal Food and Drug Administration.

HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, individually, also stipulate that the term “ultrasound device” used in this Final Judgment and Agreed Permanent Injunction includes all accessories and parts, such as transducers, even if not explicitly stated in each term.

Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, individually, stipulate that Defendants’ indebtedness to the State of Texas for civil penalties, identified in **paragraph 7 below**, for violations of the DTPA and TFDCa, having been found by this court to constitute a civil fine or penalty to and for a governmental unit and not compensation for actual pecuniary loss, is a debt that would be nondischargeable in a subsequently filed bankruptcy proceeding under either Chapter 7 or Chapter 11 and that, in the event a voluntary or involuntary chapter 7 or chapter 11 bankruptcy proceeding is commenced against the debtors, the debtors stipulate that they shall not contest either directly or indirectly future attempts, if any, by the State of Texas to have such debt declared nondischargeable in accordance with 11 U.S.C. § 523(a)(7).

The Court, after reading the pleadings and stipulations of the parties and it appearing to the Court that all parties agree to and have approved its entry of this Judgment, makes the following orders under the provisions of the TFDCa and the DTPA. The Court is of the opinion that, in view of these findings, said agreement should be and is hereby in all things approved, and accordingly that this Judgment should be entered.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED THAT:

1. This Court has jurisdiction, through the TFDCa and the DTPA, over the subject matter and over all parties to this action.

2. Plaintiff's Original Petition states a claim for relief against HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, individually.

3. Venue of this matter is proper in Travis County pursuant to §431.047(c) and §431.0585(d) of the TFDCa.

4. By entering into this Judgment, Defendants admit no wrongdoing and this Judgment does not constitute any evidence or admission of any kind regarding any issues set forth herein, nor does it acknowledge that Defendants have engaged in any unlawful activity, nor shall it be construed as evidence that Defendants have engaged in any methods, acts, practices, uses or solicitations declared to be unlawful under the TFDCa and the DTPA. Defendants do not admit the truth of any alleged facts, any of the characterizations of Defendants' alleged conduct, or any of the conclusions in Plaintiff's Original Petition, or any amended pleadings pertaining to this matter.

5. The following definitions shall be used in construing this Judgment:

A. "Advertising" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

B. "Ultrasound device", as used in this injunction, shall mean any ultrasound device, transducer, doppler imaging system, echo imaging system, or any part of the system including those defined in 21 CFR § 892.1540, § 892.1550, § 892.1560, and § 892.1570.

C. "Dangerous drug," as defined by Section 483, Dangerous Drug Act, of the Health and Safety Code, means a device or drug that is unsafe for self-medication that bears or is required to bear a federal legend such as: Caution: federal law prohibits dispensing without prescription.

- D. “False advertising” of a food, drug, device, or cosmetic means advertising that is false, deceptive, or misleading in any particular.
- E. “FDA” means the Federal Food and Drug Administration.
- F. “Federal Act” means the Federal Food, Drug and Cosmetic Act.
- G. “Labeling” means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.
- H. “Medical device reporting requirements” means reporting requirements in Section 519 of the Federal Act.
- I. “Misbrand” a device means any violation of §431.112 of the Texas Health and Safety Code, including but not limited to, labeling for a device if it is false or misleading in any particular; advertising of a restricted device if the advertising is false or misleading in any particular; or using, selling, or distributing a restricted device in violation of federal regulations.
- J. “Physician” means a person licensed to practice medicine in this state as defined in §151.002 (a)(12) of the TEXAS OCC. CODE ANN.
- K. “Practitioner” means a person as defined in §483.001(12), Texas Dangerous Drug Act, TEX. HEALTH AND SAFETY CODE ANN.
- L. “Prescription device(s)” means device(s) which, because of any potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such device, and hence for which adequate directions for use cannot be prepared; and therefore are required to bear a federal legend that states: “Caution: Federal law restricts this device to sale by or on the order of a _____” with the blank filled in with the designation of a practitioner licensed by the law of the State in which he practices to use or order the use of the device, as required by 21 CFR § 801.109.

6. **IT IS FURTHER ORDERED THAT** Defendants HEALTH SCREEN

SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and

RICHARD REUSCH, or any of their officers, agents, servants, employees, subsidiaries, assigns

and any other person acting in concert or participation with or on behalf of HEALTH SCREEN

SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and/or

RICHARD REUSCH, individually, shall not:

- a. Purchase and possess prescription ultrasound devices or any other prescription device without an order from a practitioner licensed under Texas law to purchase and possess such devices;
- b. Use prescription ultrasound devices or any other prescription device without the supervision of a practitioner licensed by Texas law to use or order the use of such devices;
- c. Use prescription ultrasound devices or any other prescription device without a written order for each patient from a practitioner licensed under Texas law to order the use of such prescription devices;
- d. Falsely advertise or falsely represent that prescription ultrasound devices or any other prescription device can be used without an order from a practitioner licensed under Texas law to use the prescription devices;
- e. Falsely advertise or falsely represent that prescription ultrasound devices or any other prescription device can be used without supervision from a practitioner licensed under Texas law to use the prescription devices;
- f. Fail to comply with federal medical device reporting requirements, as required by 21 CFR § 803 and Section 519 of the Federal Act;
- g. Fail to disclose that prescription ultrasound devices and any other prescription device used in Defendants' business are only to be used under the written order and supervision of a practitioner licensed in Texas;
- h. Disclose ultrasound screening results to clients prior to a physician's interpretation of the results;
- i. Represent that their business is licensed or approved by the Texas Department of State Health Services;
- j. Represent that their business is approved by the Office of the Attorney General;
- k. Cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services offered as a part of Defendants' mobile ultrasound screening business;
- l. Represent that goods or services offered as a part of Defendants' mobile ultrasound screening business have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have; and

- m. **Represent that goods or services offered as part of Defendants' mobile ultrasound screening business are of a particular standard, quality, or grade if they are of another standard, quality, or grade.**

7. **IT IS FURTHER ORDERED THAT** HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, individually, shall pay Twenty-Five Thousand Dollars (\$25,000.00) to the Office of the Attorney General as civil penalties pursuant to §431.0585 of the TFDCA and to §17.47(c)(1)-(2) of the DTPA. THIS ORDER shall further constitute a judicial determination that these civil penalties shall constitute a civil fine or penalty to and for a governmental unit, as defined under 11 U.S.C. §101(27), and are not compensation for actual pecuniary loss.

8. **IT IS FURTHER ORDERED THAT** Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, individually, shall pay Six Thousand Dollars (\$6,000.00) to the Office of the Attorney General as attorneys fees and investigative costs under §431.047 of the TFDCA and the TEX. GOVT. CODE §402.006(c).

9. **IT IS FURTHER ORDERED THAT** Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, individually, shall pay Two Thousand Five Hundred Twenty-Four Dollars (\$2,524.00) to cover the investigative costs of the Texas Department of State Health Services pursuant to §431.047 of the TFDCA.

10. **IT IS FURTHER ORDERED THAT** Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH'S agreement to and the Court's approval of this Final Judgment are

expressly premised upon the above stipulations, as relied upon by the State of Texas in negotiating and agreeing to the terms of this Final Judgment.

11. **IT IS FURTHER ORDERED** that Defendants shall pay all costs of the Court.

12. The clerk of the Court is authorized to issue such writs of execution or other process necessary to collect and enforce this Judgment.

13. The Court retains jurisdiction to enforce this Judgment.

14. It is agreed and understood that this Judgment shall in no way affect the rights of individual citizens.

15. All relief not granted herein is hereby denied.

Signed this _____ day of _____, 2009.

DISTRICT JUDGE

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS ACTION, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE FOREGOING FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION AND TO ITS ENTRY:

Signed this _____ day of _____, 2008.

DEFENDANTS HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, individually

By: _____
RICHARD REUSCH, Director

By: _____
RICHARD REUSCH, Individually

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