

whom the Commissioner of the Texas Department of State Health Services (“TDSHS”) reports a violation of the TFDCA, shall initiate and prosecute appropriate proceedings. In addition, §431.047 authorizes the Attorney General to seek injunctive relief under certain circumstances and recover any costs and attorney fees incurred in obtaining that relief. Section 431.0585 authorizes the Attorney General, after a referral from the Commissioner, to seek civil penalties in favor of the State for any violation of § 431.021 of the TFDCA and regulations pursuant to this Act.

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the STATE OF TEXAS and in the public interest under the authority granted him by §17.47 of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (“DTPA”), upon the grounds that Defendants have engaged in false, misleading, or deceptive acts or practices in the course of trade and commerce as defined in, and declared unlawful by §§17.46(a) and (b) of the DTPA.

PARTY DEFENDANTS

3. Defendant HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS is a Texas corporation. Defendant RICHARD REUSCH is a resident of Texas and is the director of HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS. Service of Process is not necessary because the Defendants have agreed to settle this matter.

VENUE

4. Venue of this action lies in Travis County on the basis of §431.047 (c) and

§431.0585(d) of the TFDCA.

PUBLIC INTEREST

5. By reason of the institution and operation of the unlawful practices set forth herein, Defendants have caused and could continue to cause immediate and irreparable injury, loss and damage to the State of Texas, and its citizens, and could continue to cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

6. Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH are engaged in trade and commerce, as that term is defined by §17.45(6) of the DTPA, in that Defendants are or were engaged in the business of advertising and/or marketing and delivering ultrasound screening services in Texas.

NOTICE BEFORE SUIT

7. Pursuant to §17.47(a) of the Deceptive Trade Practices Act, contact has been made with the Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH herein to inform Defendants of the unlawful conduct alleged herein, by letter mailed by certified mail, return receipt requested.

ACTS OF AGENTS

8. Whenever it is alleged in this petition that Defendants did any act or thing, it is meant that Defendants performed or participated in such act or thing or that such act was

performed by the officers, agents or employees of said Defendants, and in each instance, the officers, agents or employees of said Defendants that were then authorized to act did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of the Defendants.

NATURE OF DEFENDANTS' OPERATION

9. Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH advertise and provide ultrasound screening services using portable ultrasound devices, MHz transducers and summit dopplers in Texas. Defendants advertise and solicit customers for ultrasound screenings for vascular diseases, kidney abnormalities, liver abnormalities, gallbladder abnormalities, spleen abnormalities, and thyroid abnormalities in Texas.

10. Defendant RICHARD REUSCH serves as the director of HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS. As such, Defendant RICHARD REUSCH has the responsibility for the overall management and oversight of the company, including compliance with all state and federal statutes regulating prescription devices. He also has the responsibility of supervising other officers, directors, and employees of the corporation. As a result, Defendant RICHARD REUSCH directs and has personal knowledge of the day-to-day activities of the company.

11. On March 28, 2007, the Texas Department of State Health Services ("TDSHS") inspected Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS'S and RICHARD REUSCH'S business premises.

12. On April 10, 2007, TDSHS inspected a screening clinic held by Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN

SPECIALISTS and RICHARD REUSCH.

13. TDSHS determined that Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH were using ultrasound devices to conduct screenings on members of the public and that these devices are cleared by FDA as prescription devices.

14. TDSHS determined that Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH did not have a licensed practitioner ordering the ultrasound screening procedures for each patient.

15. TDSHS determined that Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH possessed prescription devices without any documentation to show their entitlement to possess prescription devices.

16. TDSHS determined that Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH failed to have written medical device reporting procedures.

17. At both inspections, TDSHS detained prescription devices owned by Defendants.

VIOLATIONS OF THE TFDC

18. The prescription ultrasound devices used by Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, individually are also restricted devices as defined in 25 Tex. Admin. Code §229.433 (26).

19. Since the ultrasound devices used by Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and

RICHARD REUSCH are restricted, prescription devices, Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH are required to have a licensed practitioner authorize the purchase and possession of the devices, order the procedures for each patient, and supervise the use of ultrasound devices.

20. Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH performed ultrasound screenings without authorization from a practitioner licensed in Texas to purchase, possess, or use prescription ultrasound devices. Therefore, Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH's purchase, possession, and use of ultrasound devices as restricted devices without authorization, a written order for ultrasound screenings for each patient, and supervision by a practitioner licensed in Texas misbrand these devices pursuant to § 431.112(o)(2) of the TFDCA.

21. Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH'S advertisements for the use of restricted, prescription devices without stating that such use requires supervision by a Texas licensed practitioner and a written order for each patient from a licensed practitioner and the representations that there are not "any false positive results" misbrand these devices under §431.112(o)(1) of the TFDCA.

22. Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS'S and RICHARD REUSCH'S advertisements directed toward the public of screenings using prescription devices that fail to disclose that a licensed

practitioner must order the ultrasound screening for each patient are deemed to be false by the terms of §431.182(a) of the TFDCA.

23. Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS'S and RICHARD REUSCH'S failure to have medical device reporting procedures misbrands its prescription devices under § 431.112(r)(2).

PROHIBITED ACTS UNDER THE TFDCA

24. Based on the conduct alleged above, Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, individually, have committed or caused to be committed the following acts prohibited and declared to be unlawful by § 431.021 of the TFDCA:

- a. Introducing and delivering into commerce misbranded devices violation of § 431.021(a);
- b. Misbranding prescription ultrasound devices in commerce in violation of § 431.021(b);
- c. Dissemination of false advertisements in violation of § 431.021(f); and
- d. Failing to comply with federal medical device reporting requirements, as required by 21 C.F.R. § 803 and Section 519 of the federal Act, in violation of § 431.021(t)(1)(B).

VIOLATIONS OF THE DTPA

25. Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, as set forth above, in the course and conduct of trade and commerce, have directly and indirectly engaged in false, misleading, and

deceptive acts and practices declared unlawful by §17.46 (a) and (b) of the Texas Deceptive Trade Practices Act, including but not limited to:

- a. Causing confusion as to the approval of a good by using prescription ultrasound devices without the supervision of a practitioner licensed in Texas and without an order for each patient from a practitioner licensed in Texas;
- b. Failing to disclose that prescription ultrasound devices are only to be used under the supervision of a practitioner licensed in Texas;
- c. Failing to disclose that ultrasound screenings using prescription ultrasound devices require an order for each patient from a practitioner licensed in Texas; and
- d. Falsely representing to members of the public that ultrasound screenings using prescription ultrasound devices can legally be performed without the supervision and order of a practitioner licensed in Texas.

26. The above actions by Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, individually, specifically violate §17.46 (a) and the following provisions of §17.46 of the DTPA:

- (b)(2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (b)(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have;
- (b)(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (b)(24) failing to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

INJURY TO CONSUMERS

27. By means of the foregoing unlawful acts and practices which were producing causes of injury to the persons affected, Defendants have acquired money or other property from identifiable persons to whom such money or property should be restored, or who in the alternative are entitled to an award of damages.

CONTINUING VIOLATIONS

28. Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, individually, have violated the laws as hereinabove alleged. Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, unless restrained by this Honorable Court, could continue violating the laws of the State of Texas and injury, loss and damage would result to the State of Texas and to the general public. Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH, individually, have violated the TFDCA and the DTPA.

PRAYER

29. WHEREFORE, PREMISES CONSIDERED, the STATE OF TEXAS prays that Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH be cited according to law to appear and answer herein; upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendants individually and by their agents, servants, employees, and representatives from making the representations, doing the acts, and engaging in the practices set out in the preceding paragraphs as well as from making the following representations and doing the

following acts and engaging in the following practices in the pursuit and conduct of trade or commerce within the State of Texas as follows:

- 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.

30. The STATE OF TEXAS further prays that upon final hearing this Court order Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH to pay civil penalties to the State of Texas up to \$25,000 per violation per day for each violation of §431.021 of the TFDCA, as provided in §431.0585(b) of the TFDCA.

31. The STATE OF TEXAS further prays, that upon final hearing, this Court order Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH to pay civil penalties of not more than \$20,000.00 per violation, as provided in §17.47(c)(1) of the DTPA.

32. The STATE OF TEXAS further prays that upon final hearing this Court order Defendants HEALTH SCREEN SPECIALISTS OF SAN ANTONIO, INC. d/b/a HEALTH SCREEN SPECIALISTS and RICHARD REUSCH to pay an additional amount in civil penalties, not to exceed a total of \$250,000.00, to the State of Texas, for any act or practice that was calculated to acquire or deprive money or other property from a consumer who was 65 years of age or older when the act or practice occurred as provided in §17.47(c)(2) of the DTPA.

33. The STATE OF TEXAS further prays that the Office of the Attorney General and the Commissioner of Health be awarded their investigative costs, court costs, reasonable attorneys' fees, expenses, and witness fees pursuant to the laws of the State of Texas including, but not limited to, TEX. HEALTH & SAFETY CODE ANN. §431.047(d) and TEX. GOV'T CODE ANN. §402.006(c).

34. The STATE OF TEXAS further prays that upon final hearing that this Court grant

all other relief to which the State may be justly entitled.

Plaintiff State of Texas

GREG ABBOTT
Attorney General of Texas

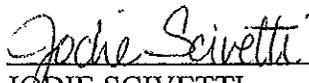
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