There Is Such A Thing As Bad Publicity – The Ohio Legislature Restricts the Use of Nursing Home Inspections or Surveys in Advertisements

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Although catchy on the surface, the often-used phrase that “there is no such thing as bad publicity” is hardly practical to nursing homes and residential care facilities trying to cement their status as reputable institutions in the wake of growing concerns of elder healthcare. This is especially true as plaintiff-centric law firms increasingly utilize advertisements that disclose the results of certain inspections or surveys as a way to coax new clients to their front doors. These types of advertisements, however, not only fuel the exponential increase in nursing home litigation—which itself has contributed to the soaring costs associated with long-term care—they also implicitly lead consumers to believe that a particular facility is not up to par.

In a climate where sensationalized media is more profitable than ever (See: 24/7 Cable News), catchy headlines are the norm while factual context is often displaced entirely. Take, for example, a law firm's television or newspaper advertisement that claims that a certain long-term care facility was recently cited by the Department of Health for failing to meet certain regulatory standards. Not only does the citation referenced in the advertisement invoke negative connotations, it may also imply that this facility is more prone to inspections, that other facilities not included in the advertisement provide better care, or that the Department of Health endorses the advertisement. What the advertisement will unlikely contain, however, is information regarding whether all facilities are inspected periodically, whether the deficiency was corrected, the actual number of deficiencies, or how the number of deficiencies compare to other results of inspections at other facilities. Therefore, while a particular facility might have substantially fewer deficiencies than other facilities across the state, all of which may have been corrected, the consumer hears or sees only that the facility was cited.

In an effort to combat this problem, Ohio Governor John Kasich signed Sub. H. B. 290 into law on December 19, 2014, which, among other things, conditionally restricts the use of such advertisements unless certain contextual information
is also provided. This law prohibits using the results of an inspection or investigation of certain facilities in an advertisement unless it includes all of the following:

- The date the inspection, investigation, or survey was conducted;
- A statement that the Director of Health inspects all homes at least once every 15 months or, in the case of a nursing facility, that the Department of Health conducts a survey of all nursing facilities at least once every 15 months;
- If a finding or deficiency cited in the statement of deficiencies has been substantially corrected, a statement that the finding or deficiency has been substantially corrected and the date that the finding or deficiency was substantially corrected;
- The number of findings and deficiencies cited in the statement of deficiencies on the basis of the inspection, investigation, or survey;
- The average number of findings and deficiencies cited in a statement of deficiencies on the basis of an inspection, investigation, or survey during the same calendar year as the inspection, investigation, or survey used in the advertisement; and
- A statement that the advertisement is neither authorized nor endorsed by the Department of Health or any other government agency.

(See R.C. 3721.02(F)(1) and R.C. 5165.67.)

It is anticipated that this law, which goes into effect on March 23, 2015, will assist consumers in providing important context and perspective when making long-term care decisions. Similarly, advertisers will (hopefully) find it more difficult to cherry-pick “facts” that mislead their already weary audience.

Should you have any questions regarding these new amendments, or any other questions regarding litigation in the long-term care setting, do not hesitate to contact anyone in our Long-Term Care Practice Group.

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