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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

March 16, 2004

The Honorable W. Greg Ryberg  
Senator, District No. 24  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Ryberg:

In a letter to this office the question was raised as to whether a law firm announcement, mailed to doctors at the address they have chosen to be listed at in the medical board directory, would be commercial solicitation for a consumer product or service.

Reference was made to the Family Privacy Protection Act of 2002, S.C. Code Ann. Sections 30-2-10 et seq. (Supp. 2003). Section 30-2-50(A) states that "(a) person or private entity shall not knowingly obtain or use any personal information obtained from a state agency for commercial solicitation directed to any person in this State." "Personal information" is defined by Section 30-2-30 (1) as

...information that identifies or describes an individual including, but not limited to, an individual's photograph or digitized image, social security number, date of birth, driver's identification number, name, home address, home telephone number, medical or disability information, education level, financial status, bank account numbers, account or identification number issued by or used, or both, by any federal or state governmental agency or private financial institution, employment history, height, weight, race, other physical details, signature, biometric identifiers, and any credit records or reports.

In my opinion, any mailing sent to doctors at the address they have chosen to be listed at in the medical board directory which would constitute a business address, and not a home address, would not involve the use of "personal information" within the above definition.

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A prior opinion of this office dated September 26, 2002 determined that business addresses are not included in the definition of "personal information".<sup>1</sup> The opinion commented that

...the definition of "personal information" contained in Section 30-2-30(1), expressly includes "home addresses" therein. Thus, the Act prohibits the disclosure of "home addresses" where such are obtained or used for commercial solicitation. State agencies are required to "take reasonable measures to ensure that no person or private entity obtains or distributes" such addresses for commercial solicitation. As you indicate, business addresses are not included in the definition of "personal information".

Therefore, a law firm announcement mailing may be made to business addresses, but not home addresses, provided by the medical board.

You had also specifically questioned whether a law firm announcement is a "commercial solicitation". However, it would be inappropriate for this office to respond to such question in an opinion as questions such as this fall within the scope of the regulation of the practice of law, a matter within the exclusive jurisdiction of the State Supreme Court. Article V, Section 4 of the State Constitution. As explained in the decision in In Re Unauthorized Practice of Law, 309 S.C. 304, 305, 422 S.E.2d 123, 124 (1992), "(t)he Constitution commits to...(the Supreme Court)...the duty to regulate the practice of law in South Carolina." Moreover, a response to such separate question appears necessary inasmuch as we have concluded that a law firm announcement may be made to business addresses, but not home addresses, provided by the medical board.

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<sup>1</sup>That opinion also determined that as to a situation where a home address may also function as a business address,

The General Assembly made no exception to the Privacy Act for those "home addresses" which are also used as business addresses...In our opinion, the Act does not require a state agency to attempt to determine which home addresses also function as business addresses. To the contrary, the law requires state agencies to use reasonable means to protect the privacy of all "home addresses" when such would be obtained for commercial solicitation purposes.

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With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General