

# TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
TEXAS MEDICAL ASSOCIATION,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-2710211

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on August 14, 2008, to consider sworn complaint SC-2710211. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.001 of the Election Code, a law administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this resolution to this respondent.

### II. Allegations

The complaint alleges that the respondent failed to include a political advertising disclosure statement in political advertising and misrepresented the true source of political advertising and campaign communications.

### III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent is the Texas Medical Association (TMA), an association that formed in 1853 with the stated mission to “improve the health of all Texans.”
2. The allegations concern a poster that was included with the October 2007 issue of *Texas Medicine*, a magazine published by the TMA. The magazine is a monthly publication distributed to members of TMA.
3. The poster at issue advocated a vote for a proposition (Proposition 15) on the ballot in the November 6, 2007, election.
4. The poster does not state that it is political advertising or identify the person who paid for or authorized the poster. The bottom of the poster includes an Internet address, “www.texanstocurecancer.com,” in addition to five logos that are used by nonprofit organizations.

5. An insert or reverse side of the poster also stated:

Please place this poster in your office.

It encourages your patients to vote “yes” Nov. 6 [sic] on the bond issue to pay for cancer research in Texas.

6. In response to the allegations, TMA’s director of communication, Steven T. Levine, submitted an affidavit on behalf of TMA. Mr. Levine swears that TMA inadvertently omitted the required political advertising disclosure statement from the posters and that TMA sincerely regrets the error. Mr. Levine also swears:

TMA contracted with the magazine’s printer to print the poster and insert it into the magazine. Although the poster contained the names and logos of several other supporting organizations, 100 percent of the cost of designing, printing, and distributing the poster was borne by the Texas Medical Association.

TMA’s direct expenditure campaign finance reports corroborate the statement that TMA paid all the costs related to the posters.

7. The complaint also alleges that two sources other than TMA were the true sources of the posters and that the respondent misrepresented the true source of the posters. The complaint provided no evidence regarding the true source of the posters.
8. In response to the allegation, TMA swears that the posters did not purport to emanate from a source other than TMA. TMA also swears that TMA publicly supported the measure during the 80th Legislature and had “no indication that any individuals were misled about the origin of the poster in question.”

#### **IV. Findings and Conclusions of Law**

The facts described in Section III support the following findings and conclusions of law:

1. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and, in pertinent part, the full name of the person who paid for the political advertising or the political committee authorizing the political advertising. ELEC. CODE § 255.001(a).
2. “Political advertising” means, in pertinent part, a communication supporting or opposing a measure that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. *Id.* § 251.001(16).

3. The posters at issue were political advertising that were required to include a political advertising disclosure statement because they expressly advocated a vote for the proposition. TMA has admitted that the disclosure statement was inadvertently omitted from the posters. TMA has also sworn that TMA paid all of the costs for the posters, which is corroborated by TMA's campaign finance reports. There is no evidence that any person other than TMA was involved with the design, printing, or distribution of the posters. Therefore, there is credible evidence that TMA violated section 255.001(a) of the Election Code by failing to properly include a political advertising disclosure statement in the posters.
4. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source. *Id.* § 255.004(a).
5. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. *Id.* § 255.004(b).
6. "Campaign communication" means, in pertinent part, a written communication relating to a campaign on a measure. *Id.* § 251.001(17).
7. TMA entered into a contract to print and publish the posters and distribute them inside an issue of *Texas Medicine* magazine. TMA's efforts relating to the posters were made for the purpose of influencing the result of the election for Proposition 15. Thus, the posters were political advertising because they supported the proposition. The posters were also campaign communications because they are written communications relating to TMA's campaign in support of the proposition.
8. The posters did not purport to emanate from a source other than their true source and TMA did not represent that the posters emanated from a source other than their true source. Therefore, there is credible evidence that TMA did not violate sections 255.004(a) or 255.004(b) of the Election Code.

### **V. Representations and Agreement by Respondent**

By signing this order and agreed resolution and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.

- 3. The respondent acknowledges that a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and, in pertinent part, the full name of the person who paid for the political advertising or the political committee authorizing the political advertising. The respondent agrees to comply with this requirement of the law.

**VI. Confidentiality**

This order and agreed resolution describes a violation that the commission has determined is neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

**VII. Sanction**

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty.

**VIII. Order**

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-2710211 as to the respondent.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Texas Medical Association, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director