



# Internet Association

July 30, 2015

Attorney General Kamala Harris  
Office of the Attorney General  
California Department of Justice  
1300 I Street  
Sacramento, CA 95814

Dear General Harris,

The Internet Association, which represents the world's leading Internet companies, is concerned about a draft legal opinion currently being prepared by your office interpreting Business and Professions Code Section 650 as it relates to the marketing of elective healthcare services offered by health care professionals via third party e-commerce platforms or marketplaces (“e-commerce marketplaces”). The opinion, if it adopts an expansive reading of Section 650, could have negative and unnecessary impacts on Internet advertising of healthcare services. Therefore, we respectfully request an opportunity to meet with your office prior to the opinion being publicly released to further discuss our concerns.

An expansive reading of Section 650 could adversely impact the ability of healthcare providers to advertise on third-party e-commerce platforms. We feel this concern is legitimate given that any conclusion reached by your office hinges on a single determination: does the advertising of a licensed health care provider’s services in an e-commerce marketplace constitute a “referral of patients” under Section 650?

The answer to this question should be no, it does not. This conclusion is apparent in the plain language of the statute and previous opinions issued by your office. Section 650 makes clear that the dispositive question is whether there has been a “referral of patients” in the first instance.

Previous Attorney General opinions have clearly defined what constitutes a “referral of patients” under Section 650. The inquiry hinges on whether the entity – in this instance an e-commerce marketplace – “selects” a healthcare provider based on the patient’s identified medical needs. *In re California Bd. of Dental Examiners*, 65 Ops. Cal. Atty. Gen. 252 (Apr. 23, 1982).

Internet companies that operate an e-commerce marketplace do not “select” healthcare professionals for customers based on the customers’ particular health care needs, nor do they have knowledge of what, if any, healthcare needs a customer may have. Customers equally do not associate the nation’s leading e-commerce sites – many of which are Internet Association members – as having a particular expertise to select the appropriate healthcare provider based on the customer’s healthcare needs. Rather, consumers shop on e-commerce marketplaces because they want a good deal on a service or good they are in the market to buy, not because they are looking for a “referral” for health care services from the e-commerce platform.

Expanding the Attorney General office’s own interpretation of “referral of patients” under Section 650 to apply in the context of e-commerce marketplaces will only serve to harm consumers and health professionals using these services, not help or protect them. A hallmark of the Internet is innovation -- in particular innovation that disrupts entrenched and outdated business models to the benefit of the consumer. The healthcare industry is a



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prime example where the Internet has accomplished positive disruption on an industry notorious for a lack of transparency in costs and customer choice.

A large driver of this positive disruption has been the creation of marketplaces by Internet Association members that combine collective consumer buying power with increased consumer choice, the results being more transparency in pricing of elective healthcare services, increased competition in the marketplace, and more savings to the consumer. This is positive progress that would be put at risk by a broad application of Section 650. We strongly believe it would not be in consumers' best interest to read Section 650 as providing expanded prohibitions that are contrary to the plain language of the statute and prior Attorney General opinions.

We appreciate your consideration of our concerns and request an opportunity to discuss them with your office in advance of this opinion being publicly released. I can be reached at (916) 498-3316 or [callahan@internetassociation.org](mailto:callahan@internetassociation.org). Thank you.

Sincerely,

Robert Callahan  
Executive Director, State of California

cc: Brian Nelson, General Counsel, Department of Justice  
Justin Erlich, Special Assistant Attorney General, Department of Justice