March 1, 2017

modelruleamend@americanbar.org

Myles V. Lynk, Esq.
Chair
ABA Standing Committee on Ethics and Professional Responsibility
321 N. Clark Street
Chicago, IL 60657

Re: ABA Health Law Section Concerns Regarding Proposed Amendments to ABA Model Rules of Professional Conduct 7.1 to 7.5

Dear Chair Lynk and Committee Members:

Thank you very much for inviting the Health Law Section to attend and speak at the public forum on February 3, 2017. As requested during the forum, this letter will summarize the Health Law Section’s concerns regarding the proposal as presently drafted.

1. Greater uniformity in applicable rules as between States is encouraged by the Health Law Section as many lawyers are part of law firms that have multi-jurisdictional practices and/or hold licenses in multiple jurisdictions. Therefore, in considering modification to the Model Rules, we suggest that guidance be provided concerning which rules apply in situations involving multiple admissions and multi-state practices. Some large law firms take the position that the governing rules are those which pertain to the “headquarters” office or the State in which the bulk of its practitioners are based, but in an increasing number of cases those factors are not really relevant and many large firms have no predominant office.

2. With respect to the proposal itself, the inability to control endorsements such as in LinkedIn or Avvo should be addressed so that attorneys are not subject to disciplinary exposure for information over which they have no control and/or for which there is a passive qualification process.

3. Proposed Section 7.2 is problematic as proposed for numerous reasons.

First, whether or not a communication “can reasonably be understood as offering to provide” legal services is very subjective and dependent upon a person’s perspective. Common social interaction and communication could inadvertently give rise to enforcement action. An attorney may not know of a person’s need for legal services or the existence of a particular matter. Nevertheless, he or she could be deemed to be soliciting simply because of coincidental alignment between that matter and his or her area of practice. In that regard, subsection (b) could create exposure for casual communication in a setting such as a networking event or cocktail party.
In addition, subsection (c) could potentially be construed as requiring materials utilized at continuing education programs and conferences to be denoted as advertising materials because marketing is one of the benefits received by attorneys participating as presenters for such programs. This could have a chilling effect on attorneys’ willingness to share knowledge at such programs because of the implications of such materials being deemed advertising under other State and Federal laws. Comments to list serves could be similarly implicated. This is of particular concern to health lawyers as we all rely on our colleagues to share their experience and expertise.

Thank you for your consideration. If you have any questions, please do not hesitate to contact us through our Section Director, Simeon Carson at simeon.carson@americanbar.org.

Very truly yours,

C. Joyce Hall
Chair
ABA Health Law Section