

Professionals On Sale

Lawyer advertising has always been a matter of great debate in my office. Ever since the United States Supreme Court said it would be a violation of the First Amendment to prevent lawyer advertising, the faces and names of many lawyers have been spread across the airwaves and cables. Some of them are even beamed down from satellites, due to the advent of dish service.

Most of the limits on lawyer advertising has gone to the wayside. The Rules of Professional Responsibility were supposed to prevent lawyers from saying they are the “best,” suggesting that they are doing business in locales where they are not, and otherwise making promises that would shock even the most aggressive used car salesman.

However, I have noticed an amazing number of doctor and hospital commercials as well. So, one day I decided to count the number of billboards between Williamsport, Pennsylvania and Philadelphia devoted to doctors opposed to lawyer advertising. I was surprised to find that hospitals and doctors occupy four times the number of billboards of lawyers. As I got close to the big city, the ratio was even higher.

Some of the billboards for hospitals come close to promising cures for all kinds of cancers, from prostate to breast and even pancreatic cancer. Praying upon the fears of the public is nothing new to advertising, and apparently is now part of the medical approach as well.

Many newspapers have a section devoted to “health and wellness.” These are barely glorified advertisements. Many of the so-called articles, obviously written by PR people, even have disclaimers at the end. Every new drug and medical device that comes out is heavily advertised not only to doctors but also to the public.

Once upon a time, there was an immunity for medical device and pharmaceutical manufacturers based upon an antique doctrine called the “learned intermediary” rule. In other words, since medical device manufacturers and pharmaceutical companies only had contact with the doctors, they could not be held accountable for promises they made to the public. However, all of that is changed, but the law has lagged far behind. Promises are made to the public concerning the newest drugs and medical devices all the time. I noted that several mornings while I was shaving and beautifying myself in the bathroom for a long day’s work, there were at least two ads that were paid for by Pfizer.

Now that we all have become duly skeptical thanks to Covid-19, it is time to look at the effect and effectiveness of all those ads projected to the public. The public is being asked to buy medical devices, pharmaceuticals, treatments, and hospital care which they know nothing about. At the same time that these sales pitches are being refined and becoming more aggressive, we have less and less information. Pennsylvania is still one of the states that does not permit the public to learn about the background of litigation against doctors, drug companies, and medical device companies. Virtually all settlements are “sealed” and many judges go along with that without a peep.

Peer review permits hospitals to evaluate and analyze misconduct of their doctors, and then they try to keep it secret from their patients. When we passed the Mcare Act in 2002, an annual report was required to be made by the Patient Safety Authority to the legislature. That report contains, only by region, the number of incident reports and serious incidents which occur in hospitals. The Patient Safety Authority actually receives that information by hospitals, but the statute only requires report by region. When is the last time you have ever seen or read that is supposedly publicly available information, even by regions? The question is never. How often do reporters actually attend the public portion of the Patient Safety Authority meetings? I never saw one in the 15 years that I served as a Senate-appointed on the Patient Safety Authority.

Lawyer advertisements can be , but rarely will they result in a risk to human life. However, dangerous and unsafe remedies, procedures, drugs, and medical device paraphernalia are peddled to the public all the time which, sometimes, have little or no good science behind them. The Food and Drug Administration is supposed to pass upon medical devices, but some classes of devices receive clearance to be sold, but no evaluation of their safety or utility.

The Food and Drug Administration is essentially a revolving door when it comes to both medical devices and pharmaceuticals. The same people who work in this industry have frequently been employed by the regular and vice versa.

One of the newest playthings for the medical profession is robotic surgery. Robotic surgery involves not the doctor placing his hands on the patient, but rather the robot, directed by the doctor. A relative of mine showed me how he can do surgery virtually on a computer set up he had in his basement; he could even teach his 14 year old how to do it. "Anybody could do this surgery, who can operate a computer." He bragged to me. How much training do doctors get on these new toys, which cost a fortune, and make the hospitals lots of money? No doubt very good doctors take seriously new technology and do their best to learn it. After all, the pressure is enormous for doctors to use procedures, devices, and drugs which they may know very little about themselves.

How about vitamin supplements? Vitamin supplements used to be regulated, but thanks to a Senator Cotton amendment, the FDA does not regulate vitamin supplements. Rather, sellers can be prosecuted for adulterating the product or lying about what is in the vitamin supplement. This does happen, and only recently a bunch of bad guys went to jail down in Texas for lying about what was in a product. However, the safety or utility of vitamin supplements is not checked by anyone. When you take the vitamin supplement, there is absolutely no way that anyone can honestly vouch for what is in the pill, where it came from, or how safe it is.

Doctors are now beginning to get wise to vitamin supplements, but too many people, including those in the medical profession, still think they are harmless. No one needs a vitamin supplement unless they have been tested for some particular deficiency and have it.

John Kenneth Galbraith back in the 60s wrote a book about advertising in which he said that industry creates consumer demand. Medical device companies, drug companies, and vitamin supplement giants have their hands in our wallets at all times. They spend enormous amounts of money to convince us that we need products, services, and procedures which we may or may not need.

Not too long ago I asked a doctor friend of mine how many patients have problems simply because they are overweight. He said, "most of them." He said he wished he could send every patient away for a year and tell them to come back 25 lbs. lighter. He said, with a sad refrain, that there would be a lot less "complications" after surgery if he could do that.

When consumers hear ads, they are usually suitably skeptical. That is a good thing. Hopefully, the public will be just as skeptical about representations made by doctors, hospitals, drug companies, and medical device manufacturers as they are about used car salesmen and, "yes," sometimes even lawyers.

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