

STATEMENT OF

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BEFORE THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION
U.S. HOUSE OF REPRESENTATIVES

HEARING ON

“EXAMINING ETHICAL RESPONSIBILITIES REGARDING
ATTORNEY ADVERTISING”

PRESENTED
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Chairman King, Ranking Member Cohen, and Members of the Subcommittee, my name is Dr. Ilana Kutinsky, it is my pleasure to testify today to relate my experiences caring for patients who have refused or discontinued medicine I have prescribed because they were frightened by legal advertising. I will also discuss the consequences of one sided attorney advertising as it relates to my personal medical practice and public safety as a whole.

Introduction

As an American Board of Internal Medicine, Board Certified, Cardiac Electrophysiologist I have the misfortune of seeing the impact of reckless attorney advertising on patient safety on a regular basis. I urge federal policy makers to ensure transparency and balance by attorney advertising related to medical treatments. The misrepresentation of facts seen in attorney advertising in mass tort ads creates fear and potential treatment noncompliance of patients as well as undermining the patient-physician relationship. I support the committee's efforts to examine this issue which contributes to chaos and confusion and greatly affects the health and safety of the American public.

As a physician, I have directly witnessed the deleterious results of a careless advertising campaign in several of my own patients. For instance, an elderly patient of mine who was independent and quite active, refused anticoagulation for her atrial fibrillation for some time in fear of potential bleeding complications. After several years of office visits and long discussions and education, I built a successful enough relationship with this patient and she agreed to initiate appropriate anticoagulation therapy. She understood that her risk of stroke and benefit of the treatment significantly outweighed the possible bleeding risks. She decided to start the

medication (Xarelto) because more than anything she did not wish to have a stroke and become disabled. Three years later she presented to the hospital with a massive stroke. I was confused and went to speak with her family, concerned that her treatment had failed. They informed me that two weeks prior she had received a flyer in the mail that warned her that her medication could cause massive internal bleeding and death. She didn't want to die and so she stopped her medication. She didn't want to "bother" me and decided to wait until her next appointment to discuss her decision. She was unaware there was any danger to her stopping her medication. She was unable to communicate with me when I saw her and subsequently fell into a coma and died. Her family had thrown out the attorney's advertisement when cleaning out her apartment as they did not recognize that more than likely it was her discontinuing her anticoagulation that led to her stroke. She was under my care for nearly 8 years and after finally convincing her to take an anticoagulant so she would be protected from a stroke; she stopped the medication after receiving a flyer from a solicitous attorney that likely has no medical background at all.

It is because of this event and others like it that I am here testifying as a patient advocate. I have not been paid or sponsored by anyone or any pharmaceutical company; I am here on my own dollar.

I strongly believe in Freedom of Speech but not when it recklessly places the public at risk. Making generalized, sweeping claims regarding medical treatments with no medical training is negligent and can have dangerous consequences. Solicitous, negative attorney advertising for the purpose of monetary gain is at its heart pathetic and desperate. Attorneys should be required to represent a fair balance of facts, or be held responsible for the

consequences of the actions they have contributed to. I believe that this type of advertising spreads fear and is unethical and goes against the American Bar Association's Model Rules of Professional Conduct that state (5) " A lawyer should use the laws and procedures only for legitimate purpose and not to harass or intimidate others." Medical decisions should be made by trained medical professionals and patients free from unqualified influences or coercion.

There are several key issues that I hope the committee addresses.

1. Attorney advertisements are currently not required to present a fair balanced view. They are not required to be factual or provide a disclaimer that the writer has no medical background.
2. Advertisements have the potential to scare patients into stopping important medical therapy, placing the patient at great risk.
3. These advertisements undermine the physician-patient relationship, instilling unfounded doubt and mistrust.
4. These advertisements undermine current evidence based medical practice and standard of care. They are directly advertising against medications determined by the Food and Drug Administration (FDA) to be safe and effective. These attorneys counsel against generally accepted medical treatments recommended by the American Heart Association (AHA), American College of Chest Physicians, and American College of Cardiology (ACA), Heart Rhythm Society (HRS) and the FDA.

My experiences as a physician:

Frequently, I am faced with a new patient who is suspicious of the medical field, a patient who comes armed with research they found on the internet or preconceived ideas about their disease process. It is with great patience that I separate the fact from the fiction while I educate the patient on their disease process. As a team, the patient and I come up with a treatment plan that we both feel comfortable with. This is the unique relationship that binds us as a physician and a patient. Biased attorney advertising interferes with patient safety and threatens this relationship that physicians hold valuable.

Current evidence supporting the use of novel anticoagulants in Atrial Fibrillation:

I am considered an expert in the diagnosis and treatment of Atrial Fibrillation. Almost daily I am asked to evaluate a patient with newly diagnosed Atrial Fibrillation. Atrial Fibrillation is the most common arrhythmia in the United States and accounts for 30% of arrhythmia hospitalizations. Five million Americans have Atrial Fibrillation and it is estimated that number will be twelve million by 2030. (*Colilla S., et. al., Estimates of Current and Future Incidence and Prevalence of Atrial Fibrillation in the U.S. adult population. American Journal of Cardiology, Volume 112, Issue 8, 1142-1146.*)

As a physician, I know that patients with Atrial Fibrillation have significant morbidity and mortality that is directly related to thromboembolic events. Over 30% of strokes are due to Atrial Fibrillation. (*Schnabel RB, et.al, Framingham Heart Study. Lancet. 2009; 373: 739-745.*) The ACC, AHA, HRS and the FDA recommend treatment of this risk by initiating therapy with anticoagulation. I know that aspirin is essentially useless in protecting my patient from a stroke due to Atrial Fibrillation. As a physician specializing in the treatment of

Atrial Fibrillation, I understand that the drugs used as anticoagulants hold some risk of bleeding, after all they are powerful blood thinners that is why they work to prevent stroke. This is why physicians use them.

I practice evidence based medicine and current data from tens of thousands of patients involved in randomized trials looking at the safety of novel oral anticoagulant (NOAC) agents vs warfarin, show that embolic events, major bleeds and total mortality is less with the NOACs than with warfarin (*Gomez-Outes A. et.al. Thrombosis, Volume 2013, Article 640723, 1-18.*) I refuse to allow an advertising campaign intimidate me or my patients into utilizing a less effective or more dangerous agent due to mass tort ads. I refuse to not appropriately care for my patient or allow an attorney with no medical training to dictate therapy or worse yet, dictate no therapy. Unfortunately, a patient may not understand or recognize the same red flags that are obvious to me as a physician.

As a physician, I urge you to take this issue seriously. Patients are dying because they are afraid to take the medications prescribed for them due to the fear brought on by these negative and one sided campaigns. There is now published data to support the above actions. In 2016 Heart Rhythm Society published a Medwatch review of reported events in patients who discontinued rivaroxaban (Xarelto) therapy in response to legal advertising. 31 reports of discontinuation were reported and all patients stopped the medication without consulting their physician. 23 of 31 patients (75%) of patients experienced a stroke or TIA. One patient died of a pulmonary embolus; another died from complications of stroke. (*Burton P., Peacock WF. Journal of Heart Rhythm Society. 2016.02.001.*)

Recommendations:

In closing, I ask the committee to ensure that all attorney advertising related to medical treatments represent a transparent, fair balanced view of medical issues. Medical attorney advertising should contain a clear disclosure, warning patients from taking any action prior to discussing with a qualified medical professional. Such a disclosure would send the patient back to their physician for informed consent and preserve the physician-patient relationship.

I wish to thank the Committee for its attention to this critical issue and for allowing me the opportunity to provide opinions of a practicing physician who has directly cared for patients influenced by medical attorney advertising.