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How Lawyers Scare People Out of Taking Their Meds

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The television commercial begins simply: "This is a legal alert for the users of Xarelto." Lawyers, the narrator says, are reviewing claims that the blood-thinning drug can cause "severe bleeding or hemorrhaging, stroke or even death." If affected, viewers are advised to call a number on the screen. "You may have a case," the speaker intones.

In 2015, lawyers spent $128 million to air 365,000 ads like this, which seek plaintiffs for lawsuits against drug and medical-device manufactures. In the first six months of this year, that number jumped to $85 million, or about 14 percent of all lawyer advertising dollars, according to X Ante, which tracks mass tort litigation advertising. And why not? These ads drum up business for firms.

They can also scare patients to death.

According to a recent report, at least 30 people suffered serious medical problems — such as strokes, heart attacks and pulmonary embolisms — because they stopped taking Xarelto without their doctors' approval after seeing the commercial. Two of those patients died, including a 45-year-old man being treated for blood clots. Two others were paralyzed. (Millions of people take Xarelto each year.)

Ads like this often include extensive descriptions of serious adverse reactions, with little context about how common these side effects are. They routinely mimic public-service announcements, claiming to be a "medical alert" or an "FDA warning." Most don't disclose that the ad is for lawyers until the final few seconds. One researcher sampled these promotions and found that only 39 percent warned viewers to consult a doctor before stopping a drug. Many that did ran that advisory in very small print.

Sometimes, when patients see these ads, they panic. In 2003, my organization surveyed 300 patients; a quarter said they would stop taking their medication immediately if they saw an advertisement regarding litigation over the drug. In another survey (commissioned by the National Council for Community Behavioral Healthcare and Eli Lilly, a pharmaceutical company), 402 psychiatrists treating patients with antipsychotic drugs for schizophrenia and bipolar disorders were contacted. Ninety-seven percent said they'd had at least one patient who stopped taking medications without their approval. Half of those patients did so because of law firm advertisements.

Lawyers argue that these ads are an important part of the work they do fighting for people injured by faulty drugs or devices. They say the products referenced can severely hurt users; lawsuits offer victims opportunities for justice. But left unregulated, the ads are their own "public health risk," says Albert Einstein College of Medicine cardiologist Evan Levine. In a 2012 article, Levine profiled a patient who put himself at risk for a stroke after he stopped his blood-thinning medication because of lawsuit commercials. "Many of the ads would scare me, if I did not know the drug to be an important agent to reduce the risk of stroke," Levine wrote.

The American Medical Association is so concerned that it recently called on lawyers to better regulate these "fear-mongering" commercials. "The onslaught of attorney ads has the potential to frighten patients and place fear between them and their doctor," the organization said in a statement. They're "dangerous to the public at-large."

Of course, drug companies spend significantly more ($5.2 billion in 2015) in their outreach to consumers. But there's an important difference: The Food and Drug Administration strictly regulates what a pharmaceutical company can include in its communications about its products.

It wasn't always that way. For most of the 20th century, drugs were marketed specifically to doctors, who determined who got a prescription and why. The FDA had very little role in regulating advertisements. Then in 1959, Congress became concerned about pharmaceutical marketing. In hearings, lawmakers pushed back at drug companies, highlighting advertisements that made claims about efficacy without evidence. Some ads also minimized the side effects of particular drugs.

Concern about ad regulation intensified in the 1960s, after a rash of birth defects caused by thalidomide. In 1962, Congress dramatically expanded the authority of the FDA, giving the agency complete oversight over prescription drug advertisements. The agency mandated that all ads include a summary of the drug's side effects along with information about its effectiveness. Today, the FDA reviews some ads before they run and others after they've gone public (health-care providers can also alert the agency to misleading ads). Violators receive a warning letter demanding immediate action. The FDA can also bring a lawsuit.

The government argued that these rules were important because drug companies had begun to target consumers directly. But pharmaceutical companies, and even some doctors, worried that this approach would scare patients into avoiding medicine they needed.

These fears did not come to pass. By 2002, 82 percent of doctors said drug advertisements did not negatively affect their relationships with their patients. Three-quarters of consumers said they appreciated the ads. And when a patient requested a relevant drug he or she had seen advertised, doctors honored that request 79 percent of the time.

Similar regulations could be developed for legal ads. University of Memphis law professor Daniel M. Schaffzin has proposed that lawyer medical ads should remind viewers to consult their doctors before they stop taking their medications. Another option: The ads could include some kind of disclaimer noting that only a small percentage of people may have had an adverse reaction to a specific drug. All claims should be backed by science, and not exaggerate risks. These and other reforms could be achieved by empowering the FDA's Office of Prescription Drug Promotion to review lawyer ads, just as it does drugmaker ads.

As these ads proliferate, those responsible for protecting the public's health and safety should make sure trial lawyers aren't held to a lower standard than those who advertise the products over which they're suing. Until then, all TV viewers should heed the warning: Reacting to trial lawyers' ad claims before consulting a doctor may be bad for your health.

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Lisa A. Rickard is one of the U.S. Chamber's top leaders on a wide range of issues, with a strong focus on legal reform.

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