

Is the ban on drugs publicity good for health?

According to a survey of European consumers¹, "the provision of better information to patients about their ailments" is the decisive point to be taken into account in improving the quality of health systems. Pharmaceutical laboratories have suggested that publicity geared to the public would contribute to such a task. But according to the EU directive 92/28 such publicity for prescriptive drugs is forbidden².

The ban on publicity for drugs is defended in the name of public health. On the basis of the idea that the pharmaceutical industry's interest amounts to the increase of its sales and profits, opponents to the authorisation of publicity³ deduce from it that the messages conveyed by advertisements for drugs cannot be regarded as information worthy of this name. Instead of helping the sick to make informed decisions, advertisers would flood the media with biased even untrue information, exaggerating the virtues and minimizing the risks of pharmaceutical products. And as drugs can have harmful effects on health and even result in death, to allow publicity to develop would amount to sacrificing public health on the back of profit.

This rejection of publicity geared to consumers is largely based on generally accepted but false ideas which we will expose here. By allowing a better diffusion of medical information to the people most concerned, the patients and those who



could become so, publicity would make it possible to fight against ignorance, a factor aggravating health problems. It would thus contribute to an improvement in the health of individuals.

Would the freedom of expression be dangerous for health?

First of all, let us consider the question of risks related to drug consumption. It is not at all obvious that these risks allow the justification of the publicity ban for pharmaceutical products. Their potential dangers do not make them separate products. Many products for current consumption can lead to accidents if they are defective or misused. Cars are obviously goods whose use can prove to be fatal. However, few people claim that road hazards are increased by publicity for cars and that it should thus be banned.

Let us also think about this condemnation of commercial publicity "tricks". If publicity bias for drugs makes them out to be particularly dangerous and justifies their prohibition, why stop there? Shouldn't one also check the danger of ideas that journalists, artists or politicians want to herald in the media before allowing them a say? For example, electoral campaigns give place to a hubabaloo which is certainly no less partisan than commercial publicity and that one can thus hardly suppose to be less biased. Shouldn't the voters also "be protected" from candidates' propaganda, so as not to be mistaken on their ballot paper and to make better political choices?

¹ Cf. "Impatient for Change", a survey of health consumer attitudes in eight EU countries (Stockholm Network/Populus, London, 2004).

² European Directive 92/28/EEC, henceforth 2001/83/EC, art. 88 (http://europa.eu.int/eur-lex/en/consleg/pdf/2001/en_2001L0083_do_001.pdf): "1. Member States shall prohibit the advertising to the general public of medicinal products which: (a) are available on medical prescription only, in accordance with Title VI; (...) 3. Member States shall be entitled to ban, on their territory, advertising to the general public of medicinal products the cost of which may be reimbursed."

³ Apart from the politicians who took part in 2002 in the rejection of a project of partial liberalisation in the Parliament, we refer here to the members of civil society who were then heard, such as the group "Europe et Médicament" gathering together other associations such as *60 millions de consommateurs*, *UFC - Que choisir*, *La Mutualité française*, *La Revue Prescrire* and the *Ligue Nationale contre le Cancer*.

If publicity can make individuals so vulnerable in their ability to make informed health choices, how can one agree to let these same people appoint their governments after an election campaign, governments who, let us recall, will have, among other responsibilities, to lead a health policy? For example, what does one do if the majority of voters elect people whose agenda, promoted with much trumpeting of partisan slogans, includes the liberalisation of publicity in the health sector?

“Access to a variety of information sources is generally regarded as beneficial in weighing up the advantages and disadvantages of a choice.”

The partisan character of opinions emitted in the political tournament is not usually regarded as an obstacle to the normal operation of democracy. One considers rather that the voter is all the more likely to make an informed choice than to he can follow debates without censure. Beyond the political example, access to a variety of information sources is generally regarded as beneficial in weighing up the advantages and disadvantages of a choice. However, one refuses to apply this idea when it is a question of pharmaceutical products. Everyone can publicly express their doubts on the qualities of the proposed drugs, but their manufacturers find themselves forbidden to communicate directly to the public on their real or supposed benefits. The consumer thus finds himself deprived of an information source in deciding on his health choices.

The prohibitionist position as regards publicity for health care "proves" much more than it says. Its logic calls into question freedom of speech in general, of which publicity for drugs is only one particular expression.

Publicity as a means of informing patients

Opponents to drugs publicity, politicians or associated activists, do not deny that access to information in the health field is of paramount importance for patients. The key point is that they do not agree with the idea that advertising financed by pharmaceutical laboratories truly gives them information⁴: "Why would one wish to

⁴ Thus, Françoise Grossetête, spokesperson for the Health and Environment Committee in the European Parliament, justified the rejection of liberalisation, not because it would have made it possible for patients to access more information but because the source from where it would have come is not advised: "It appears essential to take care that the information disseminated to the patient is controlled by scientifically neutral authorities, having public financing."

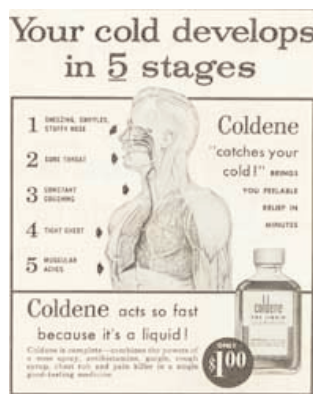
use publicity for information? The task of informing patients is too important to be left to the pharmaceutical industry, whose principal motivation is commercial"⁵. In other words, the potential users of drugs would not have anything to lose from the prohibition of publicity since this would not provide them with any valid information.

However, even the most "poor and biased" publicity provides information which can prove to be decisive for the health of the potential buyers of the promoted product, since it succeeds in attracting their attention. It delivers at least two crucial pieces of information: that the promoted drug exists and that it is on sale. It is in the interest of its manufacturer to also indicate to which use it is intended. The majority of people having neither the wish nor the competence to read the medical literature, are unaware sometimes that a treatment exists to take care of their ills. Publicity can make them discover missing information and encourage them to consult a doctor.

Patients can also be unaware of their condition. They can suffer from symptoms such as thirst, without realising that these are signs of an illness - diabetes. To sell their products, pharmaceutical laboratories would have an interest in informing them about these. Thanks to publicity, patients could at the same time learn something about their state of health and the existence of a treatment. Consequently, they could consult a specialist whom they would not otherwise have envisaged seeing. In the same way, patients for whom a treatment was non-existent, ineffective or had very debilitating side effects, could also discover through publicity that new treatments exist and decide whether to go to see a doctor thanks to this information.

Professor Paul Rubin provided an important illustration of the health benefits which publicity could generate. More and more medical studies lean towards the conclusion according to which daily dosages of aspirin can reduce the risk of heart attacks by almost 50% among middle age men. The Bayer laboratory has even produced its drug *Enteric Aspirin* specifically for this use. However, American

⁵ *Publicité directe aux patients : info ou intox ?* Act Up - Paris, 20 May 2002 (<http://www.actupparis.org/article347.html>)



regulation authorities refused the right to provide publicity informing about its preventive use against heart attacks, despite preliminary authorisation about it being put on the market. According to Professor Rubin, the victims of this prohibition, those who do not have access to decisive information, could amount annually to tens of thousands⁶.

If it is necessary to consider such calculations with prudence, the approximate character of these estimates cannot call into question the following principle: patient ignorance, maintained artificially by the publicity ban, has negative consequences on patients' health. This can be extremely grave when it is a question of life or death. One cannot simply say with Gerard Onesta, MEP and Vice-president of the European Parliament, that "drugs sold under prescription being potentially more toxic, it is a question of public health not to make publicity about it"⁷, because that is to forget that drugs are used for care and that it is useful to know that they exist in order to have access to a treatment.

There is thus an excellent reason "to want to use publicity for information": publicity provides information. Its prohibition "protects" patients from the cure by keeping them in ignorance. These are the forgotten costs of the publicity ban.

In search of profit and quality information

Having identified certain health benefits of an authorisation of drugs publicity, it remains to be known if this would have disadvantages so detrimental that these advantages would not be worth the trouble of it. Doesn't publicity allow producers to make their production profitable by creating artificial needs in people's minds, making them consume drugs beyond their real needs? And the question remains: doesn't the "commercial motivation" of laboratories guarantee that



information conveyed by publicity would be skewed to the point of directing patients towards bad choices for their health?

With regard to the first question, we take issue here with a myth. That notion supposes that men react to publicity like animals respond to stimuli. Publicity wants of course to be persuasive but it cannot force anybody to buy anything. Faced with the most diverse persuasive temptations, each man always has to choose what he is convinced by⁸. Moreover, it is difficult to understand why industrialists invest in market research if it is enough "to create" needs that the consumers do not have⁹. And if the demand could simply be created by publicity, the success or failure of a company would depend only on advertising investments. But as the economist Ludwig von Mises pointed out it, no publicity for candles could have thwarted the competition of electric light¹⁰.

With regard to "commercial motivation" and the publicity bias for drugs which it provokes, it is certain that publicity will never claim that competing products are better. However, publicity despisers take the problem the wrong way when they suggest that to be credible, an information source must not have an interest in the sale of the product. Indeed, who has the most to lose in suggesting dangerous remedies to patients if not those who "are interested", those whose incomes depend directly on the services provided to their customers?

Poisoning patients can be very costly in lawsuits, reputation and thus in benefits. If ill will or negligence cannot be excluded, it remains no less so that laboratories, insofar as their prosperity depends on convincing customers, must be concerned with the safety of their products and the conditions of their use. Thus, their financial interests would strongly encourage them to avoid misleading publicity. And they would also

⁶ Cf. *FDA Advertising Restrictions : Ignorance is Death*, in Robert Higgs, ed., *Hazardous to Our Health? FDA Regulation of Health Care Products*, Oakland, The Independent Institute, 1995, pp. 29-33. See also : Paul H. Rubin, *The Health Risks of Censorship*, The Independent Institute, 15 November 1995. (<http://www.independent.org/newsroom/article.asp?id=162>)

⁷ Gérard Onesta, *Santé / publicité : les liaisons dangereuses*, Carré d'Europe N°12, autumn 2002. (<http://www.onesta.net/theme7-texte4.html>)

⁸ Cf. Friedrich A. Hayek, *The Non Sequitur of the "Dependence Effect"*, *Southern Economic Journal*, Vol.27, avril 1961. (<http://www.mises.org/etexts/HayNonseq.pdf>)

⁹ Cf. Murray N. Rothbard, *Man, Economy, & State*, Ludwig von Mises Institute, 2004, p. 980. (<http://www.mises.org/rothbard/mes/chap12e.asp>)

¹⁰ Ludwig von Mises, *Human Action*, Ludwig von Mises Institute, 1998, p. 321. (<http://www.mises.org/humanaction/chap15sec13.asp>)

be encouraged to communicate the possible side effects and precautions of use, insofar as patients are concerned¹¹ with risks related to these treatments.

Nevertheless, if it is true that laboratories today do not have an interest in harming patients, this incentive does not fully come into play. The drugs market in Europe is very regulated. For example, a system of price control prevents firms from competing directly between themselves on their tariffs. These barriers to entry consequently mean that the firms present have less fear of a scandal, because the consumers cannot sanction them as severely as they would in a market where competition is less anaesthetized. But to authorise publicity would come back precisely to break a barrier while making it possible for new entrants to make themselves known ! Each laboratory being less protected against competition, the safety of its products and the quality of its communication would be of an all the more decisive importance for its financial health.

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Conclusion

The ban on direct publicity to patients is not well founded. First of all, its justification supposes the doubtful idea according to which depriving people of a source of information would put them in a better position to make good choices concerning their health. Actually, publicity for drugs would have beneficial effects for patients' health, because it would make it possible to communicate essential information that certain drugs exist and about health problems which they are intended to fight. Taking into account the facilities offered by the media, individuals would not obtain this information so easily without publicity.

Lastly, contrary to what opponents to publicity claim, pharmaceutical laboratories would not have an interest in investing in misleading and therefore dangerous publicity, for the simple reason that to deliberately endanger customers on whom the existence and prosperity of the laboratory depend, would be akin to commercial suicide. Laboratories would on the contrary have an interest in making their products known to consumers with publicity which does not mislead. In so far as firms owe their financial results to the support of consumers, profit and health go hand in hand. This is why an authorisation of publicity for consumer drugs would contribute to improving their health.

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¹¹Everyone might observe that automobile advertising very often focus on safety protection, as a selling point.