

in which the advertisement is violative of the statute and regulations. It is observed that the narrative account in your letter which endeavors to explain the offense does so in almost the same language as the allegations of the information, and provides little or no additional explanation of the reasons why the advertisement violates the law.

Inasmuch as the advertisement did not on its face appear to create, at least in the minds of lay persons, the impression and implications seemingly set out in your letter and suggested form of information, we have discussed this matter personally with Dr. Robert S. McCleery, of the Bureau of Medicine, to make certain the position of the FDA and to ascertain the nature of the evidence available to prove the accusation. We have considered the views of Dr. McCleery and have studied the materials submitted by him.

It appears that one of the principal reasons prosecution has been suggested is the contention that the first paragraph of the advertisement creates the impression, in the mind of the reader, that in his paper Greer was comparing liothyronine with Proloid, when in fact he was comparing it with desiccated thyroid. Our own reading of the advertisement does not create that impression. The wording of the advertisement seems to compare liothyronine, not with any particular thyroid product, but with more slowly acting thyroids.

In addition, we understand from Dr. McCleery that liothyronine has a more abrupt effect in raising the metabolic rate than does Proloid, and that as between Proloid and desiccated thyroid there is practically no difference in the rate at which the metabolism is raised. Accordingly, the fact that Greer may have used desiccated thyroid in his studies is of little importance since in this area of comparison there is little or no difference between the action of Proloid and that of desiccated thyroid.

We understand that another of the agency's objections is founded upon the contention that the comparison between liothyronine and Proloid fails to disclose that there is a potential danger of precipitating cardiac complications from the use of Proloid. However, Dr. McCleery has advised that the omission refers not to cardiac complications which arise by reason of any abrupt action on the part of Proloid, but such cardiac reactions as might arise generally from the use of all thyroid preparations. Since the advertisement is comparing the dangers arising from an abrupt action of a drug with the effect of a slower acting product, we fail to see how the omitted information could result in any misrepresentation.

Another of the agency's contentions relates to the failure of the advertisement to state that Proloid is less rapidly metabolized than liothyronine, and, therefore, cannot be withdrawn as rapidly when toxic manifestations appear. Since the gist of the comparison between liothyronine and Proloid is that the latter is slower in raising the metabolism rate, we inquired whether it would not be obvious to a physician that Proloid is less rapidly metabolized and were informed that the rate at which the drug is metabolized is partly dependent upon and partly independent of the general metabolic rate of the body, and, thus, it would be to some extent obvious and to some extent not obvious.

In view of this explanation, and the lack of any statement in the approved labeling which indicates that there is a possibility of such toxic manifestations appearing as would require immediate lessening of the metabolic rate, this ground clearly forms no sound basis for criminal action.

The agency contends that the advertisement lacked fair balance because it failed to include three statements by Greer in two of which he indicated that other products were not superior to desiccated thyroid; the third deals with the caution to be exercised in treating elderly patients or those with known cardiac complications. But since the quotation from Greer is not such as to create an impression that Greer is of the opinion that Proloid is, in general, better than other thyroid products, there would seem to be no necessity that Greer's views as to the relative over-all superiority of the various products or his caveat concerning treatment of certain types of patients be expressed.

Nor is the statement, apparently true, that Proloid is a more precise preparation whose standards exceed USP requirements one which would require the further statement for which the agency contends. The statement in the advertisement is not a quotation and is referenced to a paper by H. S. Kupperman. The language quoted as being omitted is taken from Greer. It seems that the statement in the advertisement is one of fact from which qualified physicians can form their own conclusions. Under these circumstances the opinions of