

"While I am well aware of the many medical miracles wrought by our modern wonder drugs, and while the drug companies have many splendid accomplishments of which they may justly be proud, I am not convinced that false or misleading drug advertising is the price we must pay for pharmaceutical progress." 108 Cong. Rec. p. 21086 (September 27, 1962).

Representative Multer referred to the function of the regulations:

"The Secretary's regulations necessarily would be limited to a fair summarization of side effects, contraindications, as well as effectiveness so that a balanced story appropriate to an advertising page could be presented.

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"There can be no justification for half truths either in an advertising piece or in labeling copy. We are dealing with drugs that are lifesaving and which are used in serious, debilitating diseases. Fairness alone requires that the message to physicians be a balanced one giving both the good and the bad of the drug, within the limits of advertising copy, and that the patient's interest not be obscured by a glowing picture of the effectiveness of the drug with no mention at all of its possible side effects and contraindications." 108 Cong. Rec. 21091 (September 27, 1962).

These statements illustrate the Congressional concern that the advertisement not mislead the physicians in any way. Certainly, the most obvious way in which advertisements mislead is by omission of side effects and contraindications, and Congress, naturally, focussed a great deal of attention on these facets. However, the frequent use of the term "misleading" and the context in which it was used, clearly demonstrate that Congress was concerned with the truth of the whole advertisement.

This concern is evident in a number of examples of drug advertisements which were presented on the House floor. Representative Blatnik described for his colleagues "two examples of how ads can mislead". 108 Cong. Rec. 21084 (September 27, 1962). The first was a 3-page advertisement for the drug "Singoserp". He pointed out that the headline for the ad states: "For the first time, the drug that lowered this patient's blood pressure without side effects."

Yet elsewhere the ad states that the drug "has infrequent side effects". He criticized, as well, the use of meaningless illustrations:

"Obviously they had quite a bit of space because you notice at the bottom one-third of the lefthand page is a picture of a scale. Now that does not provide any fundamental basic knowledge to a doctor because he knows what a weighing scale looks like, but it is in the picture."

The ad was printed in several medical journals, although the screening committee for the Journal of the American Medical Association rejected it because: They felt this advertisement, and I quote, "carries a misleading implication of a broad, too all-inclusive nature."

That criticism goes far beyond the mere omission of a "brief summary" of side effects, contraindications, and effectiveness. It is directed to the misleading nature of whole advertisement, and, we submit, reflects the opinion of Representative Blatnik, the sponsor of the floor amendment that was adopted, as to the abuses which the prescription drug advertising provisions were intended to correct.

The second example was an ad for the drug "Tao". Again, Representative Blatnik criticized the waste of space devoted to a picture of a slide rule: Would you not think they would have used that space to tell what the bad effects, the side effects might be? In short, to tell the whole story. They do not need a slide rule to illustrate what the drug does.

He then points out the misleading nature of the ad: Listen to what it says: On the first page it is implied that Tao is a superior antibiotic. And on the other page it says:

Tao encompasses even strains of common pathogens (notably straphylococci) [sic] resistant to penicillin and erythromycin.

They say it is superior to penicillin. What does the American Medical Association say about it? They said that this was "altogether too strong and misleading" a statement. This is a quote about this particular advertisement. This particular advertisement claimed that the drug has a greater range of efficacy than penicillin. The American Medical Association committee reported to the advertising agency that this claim "seems completely false since clinically it is quite inferior to penicillin in the treatment of most infections."

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