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COMMITTEE ON THE JUDICIARY

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March 7, 2017

Linda A. Klein
President
American Bar Association
321 North Clark Street
Chicago, IL 60654

Dear Ms. Klein:

The American Medical Association (AMA) recently adopted a resolution supporting a legislative or regulatory "requirement that attorney commercials which may cause patients to discontinue medically necessary medications have appropriate warnings that patients should not discontinue medications without seeking the advice of their physician . . ." The AMA's resolution notes that "[t]elevision commercials that seek plaintiffs regarding new medications are rampant on late-night television," that "[o]ften potential complications are spoken about them in an alarming way," and that "[a]s a result of these ads, some patients have endangered themselves by stopping prescribed medications without speaking to a physician." The AMA resolution concludes that advertisements "are 'fearmongering' and dangerous to the public at-large because they do not present a clear picture regarding the product." Dr. Russell W.H. Kridel, M.D., member of the AMA's Board of Trustees, explained the need for such commercials to advise patients to consult with a physician before discontinuing medications by noting that:

The onslaught of attorney ads has the potential to frighten patients and place fear between them and their doctor. By emphasizing side effects while ignoring the benefits or the fact that the medication is FDA approved, these ads jeopardize patient care. For many patients, stopping prescribed medication is far more dangerous, and we need to be looking out for them.¹

Indeed, much of this advertising is designed to frighten patients. After emphasizing the potential side effects of an FDA approved and doctor prescribed medication, one advertisement urges patients to call 1-800-BAD-DRUG² -- a less than subtle suggestion that the drug in question is

¹ <https://www.ama-assn.org/ama-adopts-new-policies-final-day-annual-meeting>

² <https://www.ispot.tv/ad/793E/pulaski-and-middleman-xarelto-and-pradaxa-warning>

inherently harmful. Another commercial holds itself out to be a “medical alert,”³ while another one states unequivocally that the FDA approved drug is “dangerous.”⁴ One even depicts a patient being loaded into an ambulance.⁵ It is little wonder that patients are confused and concerned about such medications and decide to discontinue taking their doctor-prescribed and often lifesaving medication. These deceptive advertisements have had deadly consequences.

A recent article published in the Heart Rhythm Journal reveals that numerous patients have ceased using their anticoagulant without consulting a physician after viewing negative legal advertisements. Based on incidents reported to the FDA Safety Information and Adverse Event Reporting System, the article summarizes these serious cases, including two deaths, as follows:

In the majority of these cases (23/31, 75%), patients experienced a stroke or a transient ischemic neurologic event; 2 patients had persistent residual paralysis. One patient, a 45 year-old man receiving rivaroxaban for treatment of a deep vein thrombosis, stopped the drug and died of a subsequent pulmonary embolism, and 1 female patient, receiving rivaroxaban for stroke prevention, stopped the drug and died of a massive stroke. All these cases were considered to be serious medical events by the health care professionals that submitted the reports.⁶

These reports are extremely alarming and bring into clear focus the rationale for the AMA’s resolution. Their recommendation ensures that legal advertising is not deceptive and that patients are not scared into discontinuing their prescribed medication. Legislation, however, should not be needed. The legal profession, which prides itself on the ability to self-regulate, should consider immediately adopting common sense reforms that require all legal advertising to contain a clear and conspicuous admonition to patients not to discontinue medication without consulting their physician. They should also remind patients that the drugs are approved by the FDA and that doctors prescribe these medications because of the overwhelming health benefits from these drugs. Given the cases noted above, lives depend on it.

Because of our concern about patient safety, we would appreciate your informing the Committee about the steps the ABA is taking to review this matter and amend the Model Rules of Professional Conduct to require common sense reforms like these.

³ <https://www.ispot.tv/ad/Afkx/the-sentinel-group-xarelto-and-pradaxa-alert>

⁴ <https://www.ispot.tv/ad/ANKO/guardian-legal-network-users-of-xarelto-or-pradaxa>

⁵ <https://www.ispot.tv/ad/AGIM/the-driscoll-firm-xarelto-and-pradaxa-linked-to-internal-bleeding>. This commercial prominently displays the Driscoll firm’s website address, settlementhelpers.com, which brings one to a page that contains numerous trusted logos including the logo of the American Bar Association, thereby implying an endorsement by the ABA.

⁶ [http://www.heartrhythmcasereports.com/article/S2214-0271\(16\)00014-2/abstract](http://www.heartrhythmcasereports.com/article/S2214-0271(16)00014-2/abstract)

Thank you for your attention to this important patient safety issue. We look forward to your response by March 21, 2017.

Sincerely,

A handwritten signature in blue ink that reads "Bob Goodlatte". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

Bob Goodlatte
Chairman