

TESTIMONY OF SHAWN H FLEMING, MD

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BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON

THE CONSTITUTION AND CIVIL JUSTICE

EXAMINING ETHICAL RESPONSIBILITIES REGARDING ATTORNEY

ADVERTISING

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Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for inviting me to testify on Examining Ethical Responsibilities Regarding Attorney Advertising.

My name is Shawn Fleming and I have the privilege of practicing as a board certified Vascular Surgeon in Winston-Salem, NC. Within the scope of my practice, I am often asked to determine the need for, blood thinners also known as anticoagulants. I prescribe anticoagulation regimens, and determine the bleeding risk for patients on anticoagulation who need surgery.

During the course of my training, warfarin was the only oral anticoagulant offered and was used for many years. While this was an inexpensive medication, it required constant monitoring and dose adjustment depending on multiple patient-related factors.

The introduction of a newer class of anticoagulants several years ago has simplified initiation of anticoagulation, maintenance of proper anticoagulation and perioperative – or before, during, and after surgery – management of patients who need to be on these medications. As with warfarin, these newer medications carry a risk of bleeding that must be weighed against the

benefits they provide to the patient. This is not a new phenomenon and one that all prescribers of these medications consider in the risk/benefit analysis for each patient.

Several years ago I became aware of legal advertisements targeting these medications when I noted that I was encountering strong (and frequent) resistance from patients to taking these specific medications. Many of their objections were made by identifying specific medications by their trade names. When I inquired about the source of their resistance, I was frequently told about “the commercial” they had seen on TV touting the dangers of these drugs and the legal opportunities that existed for patients who had taken them.

I had never in the 17 years since I started my medical training encountered such strong and frequent resistance to any other prescribed treatment (surgical or medical).

Since these commercials first appeared, I have spent significant extra time in clinic trying to educate patients about the medical facts surrounding these medications.

Not long ago, I encountered a patient in my surgical practice who was simultaneously under the care of another doctor in a different health system for an unrelated medical condition – a pulmonary embolism. A pulmonary embolism or blood clot to the lungs is a life threatening condition that is often treated with anticoagulation. You may recall CNN reporter David Blum died of this condition while covering the war in Iraq. When reviewing this patient’s medical record and history of medications, I noted he had been recently diagnosed with pulmonary embolism and that he had been prescribed an anticoagulant by his internist. During our

discussion, the patient told me he was not taking his anticoagulation medication, nor would he ever. He specifically cited a commercial he had seen as the reason for not following his doctor's advice. Even though I wasn't the physician treating his pulmonary embolism, I attempted to educate the patient on the importance of taking his medications – and, specifically, the risk of not taking the anticoagulant given his recent diagnosis. Several weeks later, I learned that the patient had passed away and that the cause of death was determined to be recurrent pulmonary embolism.

While this is the only case that I am aware of that resulted in loss of life, over the past several years I have encountered many patients who are concerned, confused and even hostile when prescribed these medications. This occurs on a regular basis.

It is my opinion that tone and content of these advertisements imply a qualitative judgment of these medications that are in contradiction to the best known medical facts and current medical practice recommendations.

In these advertisements, a “false choice” is implied. The false choice is one where you can choose between NOT taking these medications and being fine, versus taking these medications and exposing yourself to significant risk of fatal bleeding. In reality, when one is prescribed anticoagulation, it is because the medical evidence suggests that the risk of NOT being anticoagulated is far greater than the risk of bleeding while on them.

While I do not presume to know the intentions of these commercials, based on my direct interaction with numerous patients, I can testify that patients perceive these advertisements as

medical advice that is often in direct contradiction to the advice of their physicians.. The level of fear that this has generated is, in my opinion, unwarranted and in fact dangerous to my patients and certainly many other patients across our country.

This leads to conflict between patients and their physician when patients fear taking a medication their physician believes is in their best interest.

Ironically, when compared to the historical standard oral anticoagulant (warfarin), each of the new medications has a significantly lower risk of bleeding, yet the message many patients receive is that their risk is high.

It is unfortunate that patients are making decisions based on advertisements that I believe are not held to the same standards as the medical profession. Multiple levels of oversight and review led to the availability of anticoagulants which ultimately have saved hundreds of lives in the course of my career. In my professional opinion, the positive benefit of anticoagulants is significant. My patients have benefitted from the therapies and many are alive today as a result of anticoagulants being a part of our plan of care.

As such, creators of these commercials should be held to the same standards as physicians and drug companies. Again, I appreciate the opportunity to speak with you today and welcome any questions you may have at this time.