Should we be concerned about direct-to-consumer advertising of prescription drugs?

Thanks to television advertising, trade names such as Propecia, (a hair replacement drug) Cialis (a drug for erectile dysfunction), and Symbicort (an asthma medication) have entered the New Zealand lexicon. Most New Zealanders would recognise these brands as easily as they would those of everyday household products. Elsewhere in the world, the practice of direct-to-consumer advertising (DTCA) of prescription-only medication is banned on the grounds that it gives rise to significant harms.

Those that criticise DTCA of prescription drugs commonly argue that such advertisements are misleading, that they put pressure on doctors to prescribe, and that they create a demand that did not previously exist, thereby distorting the market and inflating the cost of health insurance and public expenditure on drugs. Those who support DTCA counter-argue that the ads are in principle no different to other forms of advertising, that they inform the population, and that they reassure individuals they are not alone with their problem and that help is available. They are also said to encourage people to initiate discussions with their doctor. The gatekeeper role of medicine is important here: these drugs are generally available only on prescription from a qualified medical practitioner, and this safeguard remains in place irrespective of the rules about advertising. Is this sufficient grounds to allow DTCA, or are there additional reasons for prohibiting the practice?

This issue of the JBI features two papers which take opposing sides in the DTCA debate. In her article, Yvonne Lau frames DTCA as an issue that arises in the relationship between citizen and state. She takes freedom of expression as her point of departure, and her argument highlights how New Zealand law models freedom of expression as *exchange* – that is, in terms of both the sending and receiving of messages. The problem with banning DTCA is not that it curtails advertisers' freedom to *send* messages, however. On Lau's account, the problem is that such a ban impinges on the citizen's right to *receive* these messages. Furthermore, if the state curtails basic freedoms in the best interests of its subjects, it is being paternalistic. Lau argues that this is morally undesirable, but it can be justified if citizens need to be protected from the consequences of their choices where they have been misled, deceived and/or manipulated.

By framing the issue of DTCA in this way, Lau sets the scene for a weighing of the costs and benefits of DTCA. Accordingly, she goes on to examine three arguments about the harms of DTCA, countering each in turn. She then argues that banning DTCA would obviate its benefits, which include providing information (albeit imperfect information) to particular social groups, and providing a source of information that is not 'vetted' by the medical profession. Lau concludes that banning DTCA does not constitute justified paternalism. Presumably we are invited to conclude that it is simply paternalism, and therefore morally undesirable. Her policy recommendation is that DTCA should be better regulated rather than banned. We might also conclude that this would entail significant reform to New Zealand's regulatory system which is, on Lau's own account, both fraught with conflicts of interest and ineffective.

When it comes to advertising, many citizens may wish they had a right *not* to receive certain kinds of 'information' (e.g. those delivered as 'spam'). This point highlights the *lack* of freedom that people have to opt out of the kind of exchange that Lau is discussing. Consumers do not need protection from untrustworthy practices such as advertising, she argues, because they are lied to in this way all the time. The argument is depressingly persuasive. But it may also lead us to ask why Lau construes being targeted with advertising as a fundamental civic freedom. Readers may note the shift in her word choice from 'citizen' to 'consumer', and ask whether her argument conflates the freedoms of liberal society with the constraints of consumerism.

In his article, Peter Mansfield also frames the bioethical inquiry into DTCA as a weighing of costs and benefits that flow from our being misled, deceived and/or manipulated, but he arrives at a conclusion contrary to Lau's. Drawing on his long experience with *Healthy Skepticism Inc.*, Mansfield argues that misleading drug promotion is

common and also inevitable for psychological and systemic reasons. He then goes on to evaluate DTCA in terms of its impact on several 'objectives' that the state must balance: health and the right to life; access to information; informed consent, and wealth. On balance, he finds the impact of DTCA on each to be deleterious.

Mansfield then canvasses three different policy options, and opts in favour of restricting DTCA insofar as this is politically achievable. This policy recommendation begs the question of where we might find the political will to put in place the systemic reforms that he advocates. Are political currents not flowing in the opposite direction, that is, *away* from regulation by the state of private interests? This is a pragmatic observation that does not dent Mansfield's ethical argument. The strength of the latter depends firstly on whether the 'objectives' he mentions are also seen as important values or principles, and secondly on whether one is persuaded that DTCA puts them at risk. Those who would dismiss Mansfield's call for radical reform as impractical should consider the relative practicality of the alternatives, one of which is making advertising truthful. The alternative advocated by Lau – better regulation of DTCA – also looks increasingly impractical in the light of recent journalistic investigations which have done much to focus attention on the pharmaceutical industry's influence across the board, that is, on regulators, researchers, consumers, and medical practitioners alike.(1-4) Whilst their conclusions differ, the arguments of both Lau and Mansfield prompt the same question: How much faith can we place in regulation as a remedy for compromised information about drugs that can both harm and heal?

New Zealand and the USA are the only OECD countries that permit DTCA of prescription-only medication. Current bans on this practice in other OECD countries are clearly being bypassed. 'Spam' email campaigns on prescription-only drugs evade regulation because Internet communications do not respect geopolitical boundaries. TV 'infomercials' evade regulation by a simple semiotic trick: that of conflating the genres of advertisement and public service announcement. As DTCA of prescription-only medicines becomes increasingly common – particularly in countries where it is banned – we can expect the debates to heat up. We hope that this issue of the JBI will help readers begin to weigh up the strength of the arguments on either side.

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Correction

We wish to thank an astute reader who pointed out an error in the last issue of the JBI (Volume 2 number 1). The article by Grant Gillett incorrectly used the term 'cara sui' as the Latin equivalent of 'care of the self'. The correct term is 'cura sui'.