CFNU
CANADIAN FEDERATION OF NURSES UNIONS

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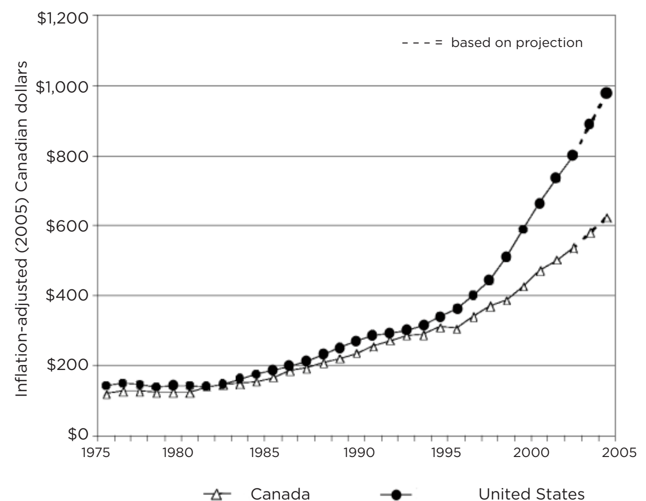
DIRECT-TO-CONSUMER ADVERTISING

CANADIAN FEDERATION OF NURSES UNIONS
BACKGROUNDER

The situation in Canada

Canada, like most other countries, prohibits direct-to-consumer advertising (DTCA) which promotes brand names along with claims about a product's indication and effectiveness (other limited types of advertising are allowed). Only the United States and New Zealand allow DTCA, although they highly regulate it. (Currently, US Democrats are proposing to make DTCA non-tax-deductable expense.[1]) Canada is not immune, however, to the efforts of large pharmaceutical companies:

- Our proximity to the United States means that many advertisements broadcasted there reach Canadians via television and print media. A study published in the *British Medical Journal* in September 2008 found that Canadian prescribing rates were affected by illicit DTCA coming across the border from the United States for the drug Tegaserod.[2]
- Foreign Internet publicity by pharmaceutical companies is unfiltered and unregulated.
- Drug companies spend approximately $30,000 per year for every doctor in Canada on drug samples, sales representatives, conferences, trips and giveaways.[3] For example, Merck representatives made 48,000 visits to Canadian physicians to market Vioxx, giving out one million samples.[4]
- "Stealth health ads," also called "help-seeking ads," mention the condition the drug maker claims to treat and drive the consumer to a website with "treatment options" or to their doctor. These ads are not required to list adverse side effects of a drug if the name is never mentioned.[5]
- Canadians must also be wary about other means for Pharmaceutical companies to get around the limits to advertising their products. One way is through surrogate advertising where one product or service is advertised in order to promote another. One way to do this is can be through sponsorships. In India which has similar restrictions on DTCA they one pharmaceutical company found a more creative workaround: "In 2009, Merck Sharp and Dohme India started a call centre called Sparsh for its blockbuster diabetes drug Januvia. The centre would offer patients advice on lifestyle, diet and exercise plans,



Morgan, S. (2007) "Direct-to-consumer advertising and expenditures on prescription drugs: a comparison of experiences in the United States and Canada," *Open Medicine:* 2007. 1(1), E37-45. With original data from OECD Health Data 2005 and inflation adjustments using the Statistics Canada Price Index.

home delivery of medication, as well as reminders to take the medicine on time. Two years later, Januvia is a major revenue earner for Merck after patients began to respond to advertisements about Sparsh."[6]

DTCA through the Internet

In July 2011, Health Canada issued an advisory on its website, "Health Products Advertising on Physician Web Sites — Questions and Answers." It warned physicians that they could not promote specific products on their personal websites. It claimed the reason for issuing the advisory was that "Health Canada has received complaints regarding direct-to-consumer advertising of prescription drugs on Web sites of some cosmetic surgeons. In addressing the complaints, it was noted that this practice was widespread. Health Canada suspects that physicians may not be aware of the federal advertising prohibitions or their application to physician advertising."[7]

Online DTCA created by drug companies is exported to countries like Canada where it is prohibited. Some of the advertising is created expressly for those markets where DTCA is illegal. Pfizer has produced mobile applications intended for Canadians, and Novartis has directly targeted both Canadian and Korean consumers.[8]

Recent headlines have pointed out that the promotional spending of drug companies has been reduced. However a closer look will show that most of this change has been a reduction in the provision of free samples. Mailings have in creased and print advertising was up 5% from 2009 to 2010.[9]

With more traditional advertising options somewhat limited, pharmaceutical companies are moving increasingly to the Internet. Online promotion crosses international boundaries and flies under the radar of regulators even when the web activity comes from within Canada. But the Internet offers other advantages. Apart from being less expensive it can be targeted directly to those most likely to buy. They can find you and post advertising to you based on your online searches. Express interest in a condition? Through your browser an "appropriate" ad can be directed to your screen. Land on a home-made page offering peer advice and you might be looking at a page produced in partnership with a company trying to sell you a solution rather than give free advice. An article in *The Globe and Mail* in the summer of 2011, details the extent of Big Pharma's online activities.[10]

The Internet often appears to be filled with "people just like us" facing the same challenges as we do. But appearances can be deceiving. A complaint submitted in November 2010 to the U.S. Federal Trade Commission claims drug company Sanofi-Aventis has paid spokespeople posing as typical consumers on the website whyinsulin.com. Pharmaceutical companies seek out and spy on patient's online social media interactions in order to target them for advertising. Unbranded websites and paid "independent" health bloggers target people who are looking for the experience of other fellow sufferers. Mention a problem online and the drug companies will be all over you to "friend" you and 'tweet" you. One website doseofdigital.com lists more than 350 examples of health forums, YouTube, Twitter and Facebook pages run by drug companies.

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Apparently, *The Globe and Mail* reports, there is technology to regulate this activity but, in the words of Dr. Barbara Mintzes, "In Canada, the problem is that we don't enforce the law properly." No fines have been imposed on illegal marketing activities of drug companies since the 1970s.[11]

Challenges to Canada's ban on DTCA

- In 2005, CanWest Global, one of Canada's largest media corporations, challenged the federal government's ban on DTCA in court, claiming that it is an unjustifiable infringement of free expression under the *Canadian Charter of Rights and Freedoms.* Due to the financial difficulties of the plaintiff, the case stalled without resolution.
- Bill C-51 (39th Parliament), while it did not become law, would have taken the ban on DTCA out of the hands of Parliament, leaving decisions regarding the prohibition of DTCA up to the discretion of the Minister and beyond the oversight of Parliament. The Bill died with the 2008 election and the government has not announced when it will be brought back.
- In 2008, an article in the Canadian Medical Association Journal criticized the lack of enforcement, saying "Apparently, direct-to-consumer advertising is prohibited only for Canadian media and businesses," since "American companies operate under American rules in Canada." The lack of enforcement of Canadian law threatens to undermine Canada's position in defending Canadian regulations from legal challenges.[12]

DTCA drives up the price of prescription drugs

- Prescription drugs are already the fastest growing portion of health care spending in Canada (17%). If we follow the US in allowing DTCA, yearly expenditures on prescription drugs would increase by approximately $10 billion. This amount would be sufficient to pay annual salaries of $250,000 to 40,000 physicians.[13]
- Advertising encourages people to seek out brand name drugs by name rather than lower-cost generic drugs.
- The gap in inflation-adjusted per capita expenditures on prescription drugs between the US and Canada grew from about Can$31 in 1995 to about Can$356 in 2005, in tandem with the rise of the US DTCA industry.[14]
- Pharmaceutical companies spend more money on marketing than they do on research.[15]
- In the United States, spending on DTCA reached an estimated US$4.24 billion in 2005 — 11 times the amount spent just ten years earlier.[16] In 2001, for example, $160 million was spent advertising Merck's COX-2, outstripping the $125 million spent advertising Pepsi.[17]

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DTCA increases the use of unnecessary, unhelpful, even dangerous drug therapies that have not been adequately tested

- Doctors were 16 times more likely to prescribe a drug when a patient specifically requested it.[18]

- DTCA leads to an increase in the use of so-called lifestyle medicines among the healthy.[19] Pills offer a quick fix for shyness, inattention at school, sadness, anxiety or insomnia.

- DTCA increases prescribing for uses not included in a product's indication and pushes the newest medications, even though their long-term risks are unknown.[20] These drugs cost more and rarely offer substantial advantage over previous treatments.[21] The heavy promotional machine behind Vioxx, for example, is said to have prompted around 25% of its sales, and David Graham of the FDA estimated that 35,000-45,000 Americans died from heart attacks due to its use.[22]

- A term was coined to describe the effects of DTCA on patient safety and public health: the "Inverse Benefit Law" meaning that the more a drug is promoted the greater the balance between benefit and harm tilts towards harm. Those most likely to benefit from a drug are typically low in number and identifiable by their condition. However, the drug companies want to sell the drug more widely to increase profits. This means selling the drug to people who will still face any potential harm from the drug but be considerably less likely to benefit. Since many more people would be exposed to the drug, more adverse reactions would be observed. There are six marketing strategies enumerated by Brody and Light to increase sales of a drug: "reducing thresholds for diagnosing disease, relying on surrogate endpoints, exaggerating safety claims, exaggerating efficacy claims, creating new diseases, and encouraging unapproved uses."[23]

Information and education

Central to DTCA proponents' free speech argument is the claim that advertising is a means of supplying valuable information to the consumer about new and potentially lifesaving drug therapies. But advertising is not education. The goal of advertising is to sell, not to inform.

- Treatment options are often difficult and delicate decisions which patients make best in consultation with health care professionals, not with advertising firms.

- There is an incentive for pharmaceutical companies to discourage alternative treatment options, including non-drug treatments, while failing to adequately and clearly present potential adverse side effects. In fact, one in four pharmaceutical ads in the US failed to meet basic FDA information regulations.[24]

- Advertising is known to instill a false sense of confidence in consumers. Ads for HIV/AIDS drugs have been linked to an increase in unprotected sex, and the belief that HIV/AIDS is a less serious syndrome; people are more likely to smoke when they see ads for drugs to help quit smoking, and less likely to exercise when drugs for weight control, diabetes, cholesterol or blood pressure are advertised.[25]

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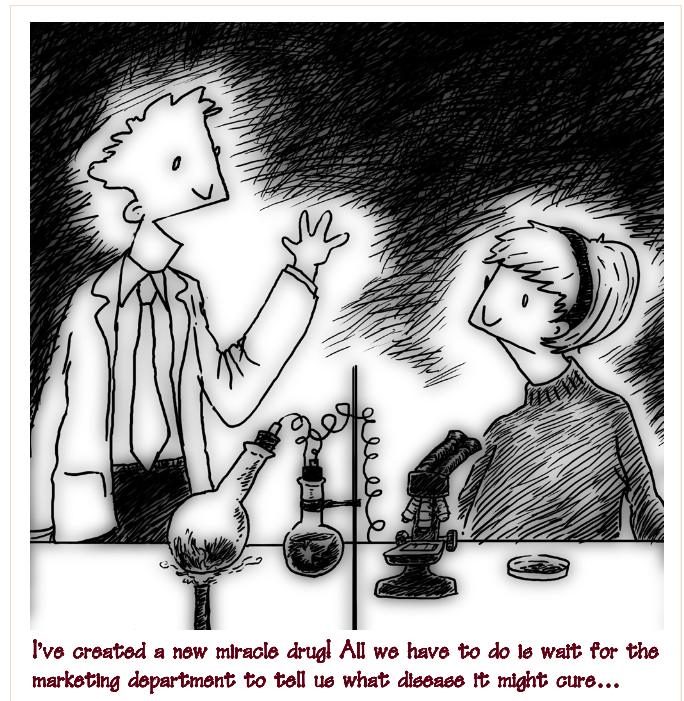
- Hoffman and Wilkes, who conducted an extensive scientific literature review, concluded that DTCA "unreasonably increases consumer expectations, forces doctors to spend time disabusing patients of misinformation, diminishes the doctor-patient relationship because a doctor refuses to prescribe an advertised drug, or results in poor practice if the doctor capitulates and prescribes an inappropriate agent."26

- There are other ways to keep the public informed. In Australia, for example, the federal government invests in an independent National Prescribing Service in order to help improve physicians' prescribing practices and patients' drug use.

As Mintzes et al. concluded, there is "...no evidence of improved drug utilization, improved doctor-patient relations, or reductions in hospitalization rates, serious morbidity or mortality attributable to DTCA."27 People need accurate information about drug therapies that could possibly help them, along with awareness of those therapies that could cause potential harm. They don't need to be bombarded by a swath of manipulative jargon.

Faced with extreme pressure from large corporations, policy makers must speak for Canadians who only stand to lose with the expansion of DTCA. Canadians do not want to pay more for drugs or put stress on their cherished health care system; they do not want to subject difficult decisions to the seductive prose of TV jingles and glossy advertisements — not while it is their health at stake.

Canada's nurses urge policy-makers to uphold the ban on DTCA.



I've created a new miracle drug! All we have to do is wait for the marketing department to tell us what disease it might cure...

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