Controversies in cardiothoracic surgery: Is it ethical to advertise surgical results to increase referrals?

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Should our profession accept medical advertising as ethically appropriate? This issue was vigorously debated at the May 2001 Annual Meeting of The American Association for Thoracic Surgery (AATS) in San Diego.

Pro: Delos Cosgrove, from The Cleveland Clinic, gave a historical overview of the evolution of the relationship between advertising and medicine in the United States. Medical advertising was viewed as unethical in the United States until 1975, when the Federal Trade Commission ruled that the American Medical Association's ban on advertising was a restraint of trade, violating a fundamental principle of American capitalism. After a 7-year battle, the Supreme Court narrowly upheld the decision of the lower courts that the ban violated federal law. The AMA acquiesced, lifting all restrictions except those that protect patients from deceptive advertising. Cosgrove effectively proved that the law in the United States was on his side.

Turning to policy, he cited statements of the American Hospital Association: "Healthcare advertising should be truthful, fair, accurate, complete and sensitive to the health care needs of the public. False or misleading statements, or statements that might lead the uninformed to draw false conclusions . . . are unacceptable and unethical"; the American College of Physicians: "Advertising by physicians is unethical when it contains statements that are unsubstantiated, false, deceptive, or misleading, including misleading by omitting necessary information"; and the American College of Surgeons: "Communications to the public must not convey false, untrue, deceptive, or misleading information through statements, testimonials, photographs, graphics, or other means." Cosgrove concluded that our medical organizations prohibit deception but clearly endorse the right to advertise.

He presented empiric evidence of approval within the profession. Expenditures for medical advertising are increasing at a rate of 50% per year. By very conservative estimates, hospitals were responsible for spending \$167 million on advertising in 2000 and physicians spent \$27 million. More generous estimates of expenditures for medical advertising by hospitals have been as high as \$1.3 billion. Three surveys conducted in 1979, 1983, and 1986 indicate that consumers want information about health care and have a favorable attitude toward medical advertising. Cosgrove displayed The Cleveland Clinic Web site page on surgical outcomes to show how advertising can provide patients with the clear, quantifiable information they require.

Con: Before presenting the case against advertising surgical results to increase referrals, Craig Miller, of Stanford University, drew uproarious laughter from the audience by handing moderator Tirone David his gun belt, throwing knife, and grenade. He commended The Cleveland Clinic for taking the high road in its approach to advertising, providing valuable information and research results to patients and physicians, and he acknowledged Cosgrove's point that medical advertising is legal. But laws are not immutable and are not always consistent with high ethical standards. He pointed out that the 1982 Supreme Court decision to uphold the lower court was as close as it could have been, with the vote split 4 to 4.

To illustrate how unethical advertising can mislead, Miller presented Web sites from several other medical institutions that display outdated and pirated statistics or make claims that appeal to the emotions and exploit the ignorance of vulnerable

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patients. Such advertising is designed to please shareholders and attract patients by persuasion rather than information.

Miller described the transformation of medicine from a profession to a business, tracing the change to 1965, when Medicare was introduced in the United States. In Miller's view this change triggered an erosion of the professionalism that emphasized serving the patient, including voluntary care of the poor, in favor of a commercial business mentality that refers to patients as clients and consumers. He quoted the South African physician-ethicist Solomon Benatar, who has said that overemphasis on the entrepreneurial business model has led to the loss of medicine's soul.

Rebuttals: Cosgrove referred to The Cleveland Clinic's policy of publishing not only its successes, but also its complications and problems, informing patients and referring physicians through medical publications, a form of doctor to doctor advertising of surgical results that benefits patients when done honestly and well.

Miller reminded the audience that The Cleveland Clinic is not representative of most medical advertisers. Examples of deceptive advertising abound, such as the commercials recently banned by the Food and Drug Administration for depicting patients with arthritis receiving anti-inflammatory drugs and patients with acquired immunodeficiency syndrome receiving antiviral drugs as robust and healthy athletes. Arguing for individual and professional accountability rather than regulation, he invoked the spirit of Leo Eloesser, 20th president of the AATS: "In the last 5000 years, attempts to assure integrity by laws and regulations and paper have failed." Miller concluded his call to professional rather than commercial values by quoting former president of the AATS and chairman of the board of The Cleveland Clinic, Floyd Loop, who warned that "the brokers, the money changers, the payers are in charge, not the provider or receiver of health care Commercialism in medicine is relentless and, if it persists, will erode trust between physician and patient, and economics will drive ethics even more than it does today."

Moderator Tirone David invited comments from the international members of the audience to broaden the scope of discussion. Alain Carpentier remarked that in France both wearing a gun belt and advertising medical results are forbidden. Advertising, unlike information, is inevitably biased. To truly benefit patients, Carpentier suggested, information must be complete and should be validated by an independent organization such as the AATS. Robert Ginsberg of Toronto commented that medical information is readily available to patients by other means and that the billion dollars spent on advertising in the United States could be better spent on providing health care.

Comment: Our Editor, Andy Wechsler, asked me how surgeons should think about advertising in relation to informed consent. The legal doctrine of informed consent is

based on the ethical principle of respect for autonomy—the right to determine what will or will not be done to one's own body. *Informative medical advertising* is generally regarded as ethically defensible because it respects the autonomy of consumers of health care information. While informing them about the treatment, physician, or institution, such advertising respectfully leaves the potential patient free to accept or reject the claims without being frightened or manipulated by innuendo. *Persuasive advertising* is morally questionable or wrong when applied to medicine because it overrides autonomy by manipulation of subconscious desires, associations, and vulnerabilities.^{1,2}

Because consent is not an event, but a process, informative advertising that contains incomplete information may create a problem when the patients make the initial decision to accept treatment. This commitment often happens early, long before the formal discussion that we associate with the signing of a consent form. That later event may be the first time that the risks and alternatives are discussed. Patients may then be so far downstream from their initial decision that they feel too committed emotionally, physically, and socially to reverse their position. For this reason, I think that informative advertising that does not include disclosure of the risks and the alternatives, as well as the benefits, can be morally problematic in the consent process. Cosgrove emphasized that complications and problems are disclosed in the medical literature, a form of advertising to the profession, but not in advertising that is directed to the lay public. Informative advertising to the public would be more ethically acceptable, in my view, if the risks and alternatives were also described.

Andy then asked how an ethicist would resolve the issue that Toby Cosgrove and Craig Miller debated. In short, is there a correct answer, or does ethical analysis always lead to a regression of ambiguities: "on the one hand . . . , on the other . . . , on a third view . . . ?" My answer is that an issue, by definition, is a matter in dispute. The lens of theoretical ethical analysis is a prism that allows an ethicist to diffract out, like the color elements of light, the essential values, shades of meaning, and circumstances that help us to understand and adjudicate the issue. After separating out these elements, an ethicist would describe multiple justifiable positions in an abstract analysis. Like electricity, which can be used for torture or illumination, medical advertising is intrinsically value neutral; its application determines its ethical standing. However, in analyzing a concrete, particular case, a clear and unambiguous "correct answer" can and would be provided by a legitimate ethical authority. When the question is whether a given advertisement meets the ethical standards of the profession, the Standards and Ethics Committee of the Society of Thoracic Surgeons can speak with authority. In one of the worst examples of advertising reviewed by the Committee, profound emo-

tional manipulation of vulnerable patients was combined with deceptive statistics. "You only have one heart; why take a chance? . . . 0.0% mortality . . ." The Committee unambiguously judged this advertisement misleading and unethical, as would any ethicist.

Our debaters have clearly established ethics discourse as part of the AATS meeting program with great style; their reflective analysis, scholarship, and humor made the debate a highlight of the meeting. A visit to <http://aats.e-studiolive.net/main.html> on the Web will allow you to share the fun and excitement of the experience, including an interesting view of the protagonists in ceremonial headgear.

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