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Editorial

Advertising and medical ethics

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Should doctors advertise their services? That is the question addressed in this issue by Dr Richard Colman (1) who was advised by the General Medical Council (GMC) that his proposal to advertise his holistic medical practice in local newspapers would not be acceptable under the GMC guidelines on advertising. Dr Colman attempted to have the GMC's ruling overturned by the High Court on the grounds that it unfairly interfered with his ability to gain a livelihood as a holistic general medical practitioner and that it was against the public interest but the High Court supported the GMC (2), and the case is, at the time of writing, under appeal. Meanwhile a report by the Monopolies and Mergers Commission (MMC) (3) has lent support to Dr Colman's position. Asked by the Director of Fair Trading to consider the effects on the public interest of restrictions on advertising imposed on registered medical practitioners, the commission concluded that some of those restrictions were indeed against the public interest and have accordingly 'invited' the GMC and other medical bodies to reassess their requirements.

What are the objections to doctors advertising? Essentially they are that individual patients, patients as a whole, and the public in general will be disadvantaged if restrictions on such advertising are not maintained. Thus benefit and the avoidance of harm to patients and the public are the relevant criteria. According to the GMC's evidence to the Monopolies and Mergers Commission a fundamental distinction had to be drawn between the provision of information about doctors for the benefit of patients and the public and promotional advertising designed to gain an increase in market share for an individual doctor or practice. The GMC guidelines were designed to encourage the former and prohibit the latter.

Almost everyone in the debate seems to agree that the objectives of benefiting and minimising harm to patients and the public are appropriate objectives. Thus the disagreements seem to turn on whether or not the banning of advertising will achieve those objectives. The professional case argued that patients who were ill or feared they might be ill were particularly vulnerable to exploitation, and to false-hope-giving claims that particular practitioners and/or treatments could cure them. Choice of unnecessary or mistaken treatment could, the GMC argued in its evidence to the commission have 'disastrous and irrevocable consequences for the patient' (4). Moreover, advertisements 'intended deliberately to influence choice in favour of the advertiser' would be most needed by 'those least able to attract patients by professional ability' (the implication presumably being that advertising would thus lead to more people being treated by the less able doctors who resorted to it). In addition if specialists were allowed to advertise directly to the public this would 'inevitably encourage self referral and undermine the present arrangements for medical care in the United Kingdom which were firmly based on the referral system'. The present arrangements worked both to the interests of individual patients (for example by reducing the dangers of erroneous initial self-diagnosis leading to time - and money - wasting self-referral to the wrong specialist) and to the interests of the community as a whole.

The latter argument was spelt out by the British Medical Association (BMA) in its evidence. The existing system whereby NHS patients were first seen by a GP and only referred to a specialist if the GP considered it necessary, was a system which 'provided the highest quality of health care at the lowest possible cost' and prevented 'the gross misuse of resources that would arise from unnecessary or inappropriate self-referral. General practitioners currently treat about 90 per cent of all episodes of ill health without referral to other agencies' (5). Not surprisingly the Department of Health was also concerned to maintain what it called the 'gatekeeper' role of the general practitioner but this led it to oppose only public advertising by specialists. 'Undermining the general practitioner's gatekeeper role would lead to poorer care, less effective use of specialist resources and increased costs to the patient and the NHS' (6).

Interestingly, little argument was put forward positively favouring advertising by specialists directly to the public and the MMC broadly accepted the professional and governmental arguments for prohibiting such advertising, stating that 'we have fully accepted the benefits to patients and the public generally of maintaining the present referral system' and adding that the 'arguments from patient

vulnerability have particular weight in this context'. However, they argued that specialists' associations should be allowed to respond to direct requests from the public for information about members and their qualifications (7) – (and the GMC has accepted that advice).

As Dr Colman points out, one counterargument to this restriction on direct specialist advertising to the public is that it restricts patients' choice of doctor, thus contravening one of the fundamental tenets of the World Medical Association's Declaration of Lisbon on the rights which doctors strive to accord to patients: notably that 'the patient has the right to choose his physician freely' (8). Such a right undoubtedly respects the preferences of patients, and perhaps it should be accorded to those in a totally private medical context, (though even here it should presumably be followed by re-referral where a medically inappropriate self-referral had occurred, in order to prevent unnecessary harm to the patient). However, where medical resources are both limited and provided by others, the preferences of patients will presumably have to be balanced against the interests of others. It is after all a clear waste of limited medical resources for someone with a urinary tract infection to refer herself in the first instance to a specialist in urology, given that in the large majority of cases perfectly good treatment can be provided by a general practitioner (indeed, though more arguably, by a suitably trained nurse).

In the case of advertising by general practitioners the MMC, while accepting the professional arguments that the relationship of trust between doctor and patient is a very important one, and 'often requires a higher degree of trust than the relationship with other professionals, even other professionals in the field of health care' (9), nonetheless thought that the 'arguments put to us are exaggerated. We do not think that the patient's trust in his doctor is likely to be undermined by the realisation that the doctor himself benefits from his work...patients will not think the worse of doctors, provided [material rewards and enhanced reputation] are not pursued at the expense of patient care...nor do we think that overt recognition of competition between doctors need undermine trust and team work between doctors when it is needed' (9). In addition the commission was impressed by the weight of consumer and patient evidence stressing the need for more, and more accessible, information to be given to patients and potential patients (10).

They rejected the argument of patient vulnerability in this context on the grounds that in general practice patients are usually able to choose a new doctor while they are well and 'not in a vulnerable state or under stress, and even without medical expertise can usually form a fair view of the service they are receiving and whether it satisfies them'. Moreover the decision is usually reversible (11). The commission concluded that current restrictions on advertising by GPs operated against the public interest and should be removed, subject to certain safeguards.

These safeguards could be attained by acceptance of two principles constraining general practitioners' freedom to advertise. Thus GPs' advertising 'should not be of a character that could reasonably be regarded as likely to bring the profession into disrepute'; and it 'should not be such as to abuse the trust of patients or potential patients, or exploit their lack of knowledge' (12).

Detailed guidelines should remain the responsibility of professional bodies but should always conform to the two principles stated, and should be no more restrictive than necessary to achieve such conformity. However, the MMC also suggested some provisions that 'could properly be included in the guidelines'. These would include a requirement that advertisements should be factual, 'legal decent honest and truthful' (the criteria of the Advertising Standards Authority's British Code of Advertising Practice); and should not disparage other doctors or make claims of superiority, either for the service provided or for the doctor himself. A requirement that no advertisement should explicitly or implicitly claim to cure particular complaints would be consistent with the two principles enunciated by the commission. Exceptionally there may be places or media where it would not be appropriate to place leaflets or other advertisements and this could be controlled by the GMC under the rubric of not bringing the profession into disrepute – otherwise no such restrictions should be imposed. Moreover, leaflets giving information about general practices should be distributed as the GPs wish, within the areas they serve, though 'cold calling', 'targetted distribution to particular groups or individuals', and advertising methods that become a nuisance or put prospective patients under pressure could all justifiably be banned.

However, the commission rejects the existing professional requirement that advertisements should be 'of a non-promotional' nature, on the grounds that the distinction is difficult to maintain in practice, and is unjustified where patients are not in a particularly vulnerable state, as is normally the case when people are choosing a general practitioner. Here the remaining dispute seems largely semantic. The underlying objective of the medical profession's traditional ban on 'promotional' advertising is surely to prevent the natural human tendency to be greedy for wealth from operating excessively against the interests of patients and society. Given the remaining restrictions on advertising defended in the interests of patients and society by the Monopolies Commission, that objective seems hardly threatened by the extension of advertising which the MMC do recommend. Instead their report may reasonably be hoped to stimulate widely desired improvements in the methods whereby patients and prospective patients can more easily acquire full information about the general practices available to them locally.

(Continued on page 85)

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(Continued from page 60)

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