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## Patient Information: Issues of Freedom and Efficiency

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The European Union's Directive 92/28 defines medicinal products advertising as "any form of (...) information, canvassing activity or inducement designed to promote the prescription, supply, sale or consumption of medicinal products."

Member States forbid the advertisement to the public of medicinal products which:

- ? are available on medical prescription only;
- ? contain psychotropic or narcotic substances, within the meaning of the international conventions.

In contrast, medicinal products may be advertised to the general public which are intended and designed for use without the intervention of a medical practitioner for diagnostic purposes or for the prescription or monitoring of treatment, with the advice of a pharmacist, if necessary. Member States are also permitted to ban on their territory the advertising of medicinal products whose cost may be reimbursed (as is the case in Italy).

Any and all direct interaction between the industry and the customer (namely, the patient) is thus prevented, in fact vesting the exclusive responsibility for the prescription of any product in an intermediary (namely, the medical practitioner).

In this *Briefing Paper* we conclude that:

- ? this prohibition stems from a substantive misunderstanding of the role of advertisement in a free

### KEY FINDINGS

- ✍ European Directive 92/28 forbids the pharmaceutical industry to advertise medicinal products that can available on medical prescription only or that contain psychotropic or narcotic substances
- ✍ National regulations can widen the scope of the ban, as it is the case of Italy.
- ✍ There is no evidence that advertising can orient individual preferences or that it can function as an "hidden persuader."
- ✍ Advertising is a crucial element of the functioning of the market.
- ✍ Drugs are products not substantially different from any other.
- ✍ The European ban is contrary to the European Charter of Patient's Rights and jeopardizes the aims of the Lisbon declaration.
- ✍ More information to patients can turn in a lesser burden on the budget of the national health systems.
- ✍ Ignorance is more unsafe than information.

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- market,
- ? this prohibition is a consequence of a *sciamanic* view of public health, which envisages the medical practitioner as the one permissible channel between the individual and his bodily health, as opposed to a *individualist* view, which acknowledges and promotes individual responsibility.

### Can advertising actually influence people's preferences?

Among the most significant causes of the lingering diffidence towards freedom to advertise of the pharmaceutical industry, a general lack of understanding of the nature of advertising itself certainly figures.

It is not easy, under this respect, to assess the lingering impact of the argument of Vance Packard's *The Hidden Persuaders*,<sup>1</sup> which can be relied to surface in every discussion of this topic. Advertising is purported to be part of the endless host of manipulative tactics of which we are unaware, and which Packard explored in his book. This literature, in its turn, has spawned a long catalog of urban legends, ranging from alleged "subliminal messages" from soft drink makers at the entrance of movie theaters, supposed to somehow "compel" moviegoers to purchase an unwanted drink, to a number of equally amusing examples.

There is at least a couple of problems with this theory, both of them significant. The first is philosophical. Such a view assumes a very limited notion of free will: if personal will can be bent with such ease, how it is possible to believe that any individual can act freely? And, from a political perspective, such a notion is potentially destructive of any representative democratic government: if, as it were, an individual is so vulnerable to commercial advertising to be deeply influenced in choices of trivial relevance to his life, what is to be said of political advertising? Are electoral TV ads, posters

and rallies indeed bound to crush individual consciousness, to the point of turning each person into a puppet in the hands of all sorts of political hucksters?<sup>2</sup>

Packard's theory can be easily falsified by a cursory glance at our everyday experience. After all, whatever the flaws of modern democracy, we can observe repeated changes of governing majorities and swinging preferences in the voters. Politics cannot be reduced to mere political communication, and the current rulers, although enjoying easier access to a number of "approval-shaping" devices, are often rejected by the voters.

Moreover, a copious literature exists showing the empirical tenuousness of the prejudice portraying commercial advertising as capable to significantly orient consumers' choices.

Two noteworthy examples can be mentioned, also in view of their particular ethical implications, which makes them relevant to the issue of patient's information, namely the examples of direct advertising to children and tobacco advertising.

In regard to the former, it is usually alleged that this kind of advertising does have a considerable influence on the choices of the younger viewers, (particularly in the choice of toys and snacks) undermining the authority of parents and their ability to control such choices. The main offender is purported to be television, indeed the media with which the younger consumers are more intimately acquainted (obviously, as children mature advertising on print becomes progressively more relevant).

It is to be noted, however, that recent empirical studies have shown that children *as young as five* display well-defined preferences about TV programming: they choose to expose themselves to some shows instead of others, according to their personality, age, cognitive development, and

<sup>1</sup> Vance Packard, *The Hidden Persuaders*, (New York: D. McKay, 1957)

<sup>2</sup> For an analysis of political marketing from a scientific perspective, see A. Cattaneo and P. Zanetto, *(E)lezioni di successo. Manuale di marketing politico*, (Milan: ETAS, 2003).

gender.<sup>3</sup>

As in the case of adults, the relevant literature shows that children are not a passive advertisement audience, that they do not fall for everything that comes out of the TV screen, and are instead able to nurture opinions and preferences about the specific commercial they are watching. More specifically, a 1994 study shows that children as young as 11 do display a large degree of *skepticism* about the contents of selected advertisement campaigns.<sup>4</sup>

Children are a valuable and significant market: they directly purchase a sizeable amount of merchandise, and they exert a significant degree of influence on their families' consumption choices. It is thus easy to see why they are targeted with intensive marketing campaigns with the aim to promote the products intended for their consumption.

This said, advertising can have both intended and unintended consequences: commercials do convey information not always consistent with the message or the image the product maker meant to communicate. From the way an ad is made, from the highlights of the commercial, from the very look of the latter, (wherefrom one can infer the amount of resources allocated to the campaign, if not its total cost) it is possible to glean a large amount of information. Very young consumers do actively participate to this process, and—in spite of the common prejudice—have been recognized as *advertising-literate*.<sup>5</sup>

Furthermore, a report by the Institute of Psychology of Bonn University conceded that heretofore, no study can show a direct and exclusive causal relationship in children

between advertising and consumption.<sup>6</sup>

Under this respect, it is interesting to observe the effects of advertising on tobacco consumption. Cigarette producers have been in the dock for a long time, until the implementation of the European directive dated May 26, 2003,<sup>7</sup> which banned all media advertising of tobacco products. In many countries, Italy included, the ban goes as far as forbid billboards, and it has been suggested to bar tobacco producers from the sponsorship of sports events and athletes.

The question arises, though, whether a clear link does (or did) exist between tobacco consumption and advertising.

Judging from the perpetual alarms raised about the number of “young” smokers, it would appear that the ban on tobacco advertising did not have a remarkable impact on the decision to begin smoking. In fact, the Italian Minister of Health, Girolamo Sirchia, has recently charged not only TV ads, but also the mere fact that smokers are frequently portrayed in movies, TV serials and shows of inducing the youth to smoke.<sup>8</sup>

Again, we are facing a very limited view of individual will and responsibility, leading to the belief that the mere sight of another person behaving in a particular manner can compel an individual to embrace the same. On this basis, one could hardly explain why detective movies are not banned, since, by this rationale, they are likely to encourage crime!

Cigarette advertising has been especially singled out for inducing younger consumers to tobacco use, enticing them to begin smoking by virtue of the association of the most important tobacco brands either with

<sup>3</sup> P. Valkenburg and S. Janssen, “What do children value in entertainment programmes”, *Journal of Communications*, 49, 1999, pp. 3-21.

<sup>4</sup> D. Bousch, M. Friestad and G. Rose, “Adolescent scepticism towards TV advertising and knowledge of adviser tactics”, *Journal of Consumer Research*, 21, 1994, pp.332-341.

<sup>5</sup> C. Preston, “The unintended effects of advertising upon children”, *International Journal of Advertising*, 18, 1999, p.368.

<sup>6</sup> Quoted in R. Bergler, “The effects of commercial advertising on children”, *International Journal of Advertising*, 18, 1999, p.423. For a valuable survey of this issue, see A. Furnham, *Children & Advertising. The Allegations and the Evidence*, (London: Social Affairs Unit), 2000.

<sup>7</sup> In its turn, this directive complemented a more intricate legislative process, ostensibly peaked in 1998 with the issue of Directive 43, which famously barred cigarette makers from sports events sponsorship.

<sup>8</sup> See Ministerosalute.it, May 2002.

events generally held to be glamorous and cool (notably, motor sports) or with lively and alluring images.

Unfortunately for those who entertain this notion, the available evidence, as exhaustively reviewed by Hugh High in his *Does Advertising Increase Smoking?*,<sup>9</sup> does not support this apparently suggestive conclusion. As High illustrates, a survey of the major studies on this matter shows that it is impossible to substantiate the existence of a solid causal link between advertising and tobacco consumption (since, as a well-known maxim in social sciences goes, correlation does not imply causation). Moreover, a noteworthy study is worth of mention.

This study investigated one of the most recognizable and—arguably—most potentially influencing brands, namely the R.J. Reynolds campaign centered on the fictional character of Joe Camel, whose influence on younger minds was supposedly very high. After a close review of available evidence, the U.S. Federal Trade Commission concluded that there is no demonstrable link between the inclination to buy and smoke cigarettes among the youth, and the strong brand identity of Joe Camel.

It is not immediately obvious that the success of a brand is associated with the widening of its constituency: a 1995 survey shows that the youths more able to identify Joe Camel were the more likely to disapprove cigarette smoke.<sup>10</sup>

Beyond journalistic oversimplifications, therefore, the crucial finding of studies on this topic is, as High summarizes, that “while tobacco advertising *may be* associated with tobacco consumption, it does not follow that tobacco advertising induces people, particularly youngsters, to smoke.”<sup>11</sup>

This finding, along with evidence relating to the relationship between children and advertising, buttresses the conclusion that individual will cannot be “manipulated” by the contents of commercials. Advertising conveys information, and does not control society. In so doing, it satisfies a real consumers’ demand: the availability of information is a way, or rather, *the way*, to reduce uncertainty. To wear designer’s clothes enhances the social persona of the wearer; to purchase the drink of a renowned maker guarantees that the taste will be the same everywhere, guarding the consumer from unpleasant surprises (as well as, obviously, from enjoyable discoveries).

### Advertising and the theory of entrepreneurial discovery

In the view of Israel M. Kirzner, the misconceived role of advertising in the framework of economic theory (wherefrom public choices are more or less purposefully shaped) can be explained by the fact that neo-classical economic theory analysis cannot easily accommodate it. In such analysis advertising is usually held to be “generally harmful and wasteful phenomenon, responsible for serious divergence of capitalist performance from the efficiency conditions in the perfect competition model.”<sup>12</sup>

Although some neo-classical economists do realize that advertising conveys information, Kirzner suggests that it is not by chance that others (as famously illustrated by John Kenneth Galbraith<sup>13</sup>) do not understand this practice, to the point of seeing it as evidence that in fact market relations are not characterized by the notion of “consumer’s sovereignty.”<sup>14</sup>

<sup>9</sup> H. High, *Does Advertising Increase Smoking? Economics, Free Speech and Advertising Bans*, (London: Institute of Economic Affairs, 1999).

<sup>10</sup> R. Mizerski, “The relationship between cartoon trade character recognition and attitude toward product category in young children”, *Journal of Marketing*, 59, 1995, pp.58-70. See also H. High, *Does Advertising Increase Smoking?*, pp.87-88.

<sup>11</sup> H. High, *Does Advertising Increase Smoking?*, p.94.

<sup>12</sup> I.M. Kirzner, *How Markets Work: Disequilibrium, Entrepreneurship and Discovery*, (London: Institute of Economic Affairs, 1997), p.54.

<sup>13</sup> See particularly Chapter 11 of J.K. Galbraith’s *The Affluent Society*, (Boston: Houghton Mifflin, 1958).

<sup>14</sup> For a critical appraisal of the use, suggestive but inappropriate, of this phrase, see B. Leoni, “Mito e realtà dei monopoli”, in A. Mingardi (ed.), *Antitrust*.

Kirzner's theory of entrepreneurial discovery, focusing on the alertness of the entrepreneur, and on his role as "discoverer of the unknown," in brief, on the creative content of his trade, offers a more convenient explanation of advertising.

As Kirzner writes:

In order to serve the preferences of consumers, producers have to do far more than merely fabricate and make available the goods they believe consumers desire most urgently. They must do more, even, than to make available the information they believe consumers need to acquire and appreciate the goods on offer. After all, the entrepreneurial discovery perspective shows that mere availability does not guarantee that those needing information will have it. Even if information is staring them in the face they may simply not notice it, and remain unaware that there is anything further to be known.

It is therefore necessary for producers, intent on winning the profits from innovatively serving consumer preferences, also to *alert consumers* to the availability and the qualities of goods. Clearly there is a role for advertising beyond "providing information in response to consumer demands."<sup>15</sup>

If we deem the entrepreneur to be not a mere producer of goods the information about which is somehow already available to consumers, but as an *innovator*—if, in other words, we have a *dynamic*, as opposed to *static*, notion of competition, advertising becomes necessary. In this case advertising is not mere "information dissemination," but becomes an aggressive strategy aimed to depict both a product and its features in the most enticing way, and with the most inviting appearance.

The reason is obvious: the career of an entrepreneur is not characterized—if not in exceptional instances—by the exclusive

attention to one market, however attractive. Everyone is a "plural consumer," hardly interested in the satisfaction of a single need, and is characterized instead by diverse requirements, by different wants and desires, and by constantly evolving preferences.

Even the most simple and trivial event of our life as consumers—the choice between product A and product B—cannot exist in a "informational void," but needs a steady flow of fresh information, since the available offer changes continually.

As Kirzner adds:

The notion of 'serving the consumers' must be broadened to mean fulfilling consumer preferences, not as they were before the entrepreneur began his activities, but as they will be once the entrepreneur has made consumers aware of his product.<sup>16</sup>

From this perspective, any denunciation of the entrepreneur's attempt to "orient" consumer's preferences is plainly meaningless: contemporary forms of advertising, aggressive in style and aiming to grab the attention of potential customers, can be properly appreciated on the basis of the producers' need to inform the potential consumer of the existence of hitherto unknown products.

It is clear that, in a complex, changing and uncertain world, consumers can only be imperfectly informed of the features of the available goods. Eliciting their interest becomes an increasingly sophisticated endeavor, and entails ever rising attention and expenditure. Since each of us is a "plural consumer" and time is a scarce resource, the advertisement must convince us to turn our attention to a specific product—and this just to make sure that we become acquainted with its contents.

This notion of advertising could mislead us into believing that capitalists do invest substantial resources in the attempt to goad consumers to *purchase unwanted goods* or, in different words, that the necessary amount

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*Mito e realtà dei monopoli*, (Soveria Mannelli: Rubbettino, 2004), pp.27-53.

<sup>15</sup> I.M. Kirzner, *How Markets Work*, p.55.

<sup>16</sup> I.M. Kirzner, *How Markets Work*, p.56.

of advertising for a given product is inversely proportional to the genuine wish of the consumers to enjoy it.

This view assumes that producers deem more efficient to invest resources in goods they know or anticipate the public does not want, and then proceed to invest as many resources in sophisticated advertising campaigns, and that the whole process is somehow more rational than simply invest in goods that are known or expected to be desired by the consumers.

There is no compelling reason to accept such a view, which assumes that the consumers' will can be bent and shaped by corporations (while, as we have seen, there is no evidence that it can be in any way "controlled" by advertising), and that corporations themselves feel confident enough of this presumed control to systematically invest, as it were, in cheating and swindling their costumers.

To be sure, this view contrasts with a straightforward observation, easily confirmed by the common experience, namely that innovative products do often *actually improve our lives*. The entrepreneurial process does in fact change our lives, but it does not orient them in a direction that consumers themselves do not deem beneficial. After all, if we actually faced a deceitful practice, the problem should not be found in advertising as an instrument for a fraud, but in the fraud itself. Otherwise, one could as well advocate a ban on cars, since they are often used as a getaway vehicle after a robbery.

Under this respect, Robert B. Ekelund and David S. Saurman have emphasized how the host of regulation enacted for the "consumer's protection" are usually based on the assumption that "consumers are considered irrational and the subjects of manipulation of advertisers and producers. The term 'consumer protection' itself implies that consumers are weak and defenseless in the marketplace and that they must be

somehow protected from any fraud associated with advertising".<sup>17</sup>

But "consumers are not irrational and will not consciously act in a manner that is detrimental to their own self-interest. Consumers will not *continuously* buy empty cereal boxes (be defrauded) just because they are advertised on Saturday morning TV."<sup>18</sup>

After all, producers themselves are consumers, since they consume all that they do not themselves make. The vision of a world in which everybody is a victim of someone else is a truly appalling image.

In brief, consumers' will is not oriented by advertising campaigns; rather, advertising is the device the producers use to *inform* consumers of the existence of new products. Consumers are free to be wary of the information they receive and, in fact, empirical evidence shows that this is what actually happens.

#### Are pharmaceutical products different?

We have explored, albeit briefly, the major misconceptions about the role played by advertising in a free society. Conceivably, however, it could be argued that medical products are *by their very nature* different from any other class of goods, as they affect in a very direct and immediate way people's health.

The most effective argument against allowing direct information to the patient is an obvious illustration of what is usually indicated as a "vicious circle:" it is assumed that the patient does not have the degree of technical knowledge needed to assess the effectiveness of a medical product and, therefore, it is resolved that he cannot have the right to gather *further* information.

In other words, ignorance excuses *more* ignorance.

It is perfectly plain that, as a rule, the patient

<sup>17</sup> R.B. Ekelund, Jr. and D.S. Saurman, *Advertising and the Market Process. A Modern Economic View*, (San Francisco: Pacific Research Institute for Public Policy, 1988), p.161.

<sup>18</sup> R.B. Ekelund, Jr. and D.S. Saurman, *Advertising and the Market Process*, p.162.

cannot avail himself of the same degree of knowledge of a medical practitioner: all in all, this is an obvious consequence of the natural process of *division of labor* underpinning any society. The division of labor likewise entails a *division of knowledge*: since the economic, intellectual and temporal resources available to each individual are limited, the reliance on skilled individuals is enormously convenient and helpful, and exempts us from the need to deepen or widen our expertise in different areas. Each of us is “rationally ignorant” of most things: gaining expertise in most fields entails too high a cost when compared to the expected benefit. The division of labor provides an answer to this quandary: somebody else has already paid that cost.

To have functioning plumbing we do not need to improvise us as plumbers. The same applies for that uniquely important service provided by physicians, whom we rely on for the monitoring of our health state and for the possibility to treat any harmful condition.

This does not imply, however, that physicians ought to enjoy a complete monopoly on our health: not only because it is too precious a good to be entirely left to someone else, albeit skilled in his trade, as paralleled in the old saying that “war is too important to be left to generals,” but also because every legal monopoly is known to inevitably bring about several problems that are easily avoidable in a market order: in this instance, in the information market.

Let us delve in this matter a step at a time.

The fact that health is plainly a crucial part of our lives is not *per se* a valid rationale to limit the amount of information relating to the safeguard of the special good it represents. Feeding is likewise a crucial part of our lives, but nobody fancies a monopoly on bread-making or to entrust bakers with the task of prescribing us—according to their best scientific judgment—the most appropriate quantity and quality of our daily bread intake.

In actual fact, in a society of “plural consumers” it is likely that they are keen to gather detailed information about the

available goods, the more so when these goods are relevant to important facets of their lives. Arguably, it is more rational to allot time and energy to gather information about products from which our welfare depends, than about goods of minor importance to our daily lives.

In a free market consumers do not live in a “wilderness of ignorance.” Nonetheless, information is not free: to gather it, it is necessary to sacrifice valuable resources (including leisure). Hence, the value of any additional scrap of information—according to economic logic—becomes increasingly smaller.

Consumers do weight rationally the costs and the benefits of collecting information, and the amount of information they have reflects this fact. “Consumers may be viewed as generally possessing an amount of information that is sufficient for them to make reasonably informed choices over most goods and services given the cost of becoming better informed”.<sup>19</sup>

If this is the process underpinning the interaction of information and advertising in a market, it is hard to see the reason which supposedly makes the case of medicinal products, as well as the case of that particular—and admittedly essential—good that is people’s health, different.

Specifically, it is worth of note that a recent survey conducted by Populus and Stockholm Network shows that patients do in fact demand greater information. In fact, 84 percent of the Italian respondents think that giving patients more information about their illness would mark an improvement in the quality of healthcare. Furthermore, the demand for greater information is a major concern of Italians, followed by giving patients more control on public spending on health (69%), increasing range of doctors and hospitals (64%), increasing the number of medicines and treatments (56%), and making it easier for patients to spend their

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<sup>19</sup> R.B. Ekelund, Jr. and D.S. Saurman, *Advertising and the Market Process*, p.164.

own money on health (55%).<sup>20</sup>

A survey conducted in 2002 by PatientView asked some patient advocacy groups whether the European Union should allow pharmaceutical companies to supply direct information about prescription drugs. 33 percent of the respondents answered in the affirmative, while 17 percent provided the same answer, albeit stressing the importance of proper controls.<sup>21</sup>

Significantly – and at least in part understandably – patient organizations themselves are the most vocal in denouncing the absurdity of a *sciamanic* view of health, which holds it to be only achievable through the involvement of a medical practitioner.

Such a view it is to be contrasted with an individualist perspective, one based on the assumption that every individual possesses his own body and, hence, of the good health of the latter. Pavel Kohout has indicated the European approach to the problem as a “veterinary” one: “Diagnosis and cure is an information-demanding process. The more information a patient has on his or her illness and available therapies, the more it's likely that the best solution will be found. True, for a lazy or a sloppy doctor it's not easy to work with a well-informed patient. The information can't do any harm. But incomplete or distorted information can do much harm - and this is precisely what the drug information ban leads to.”<sup>22</sup>

Moving from such a perspective, it is difficult to bear with the widespread restrictions to patient information such as those in force today in Europe.

Advertising is located at the intersection of what Ronald Coase identified as “the market for goods” and “the market for ideas.”<sup>23</sup> in a

now classic article, the 1991 Nobel laureate for economics showed how the case for regulating either market are basically the same. Nevertheless, as is well-known, passionate advocates of the freedom of speech have often opposed the freedom of the market: specifically, they have often maintained that the lack of information on the part of consumers requires a broader regulation.

The same argument could be advanced in the case of the “market for ideas,” for which even the most ardent supporters of socialism are in of absolute freedom: yet, similarly, individuals cannot always master all the information needed to approach in a thoughtful manner a specific “product.” Far from it: a long catalogue of errors and horrors in the history of the world, in the name of a number of ideas, reveals that the realm of ideas, views and words can foster terrible tragedies.

Still, the deep-seated prejudice in favor to freedom of speech rightly reminds us that censure is worse than the free circulation of the less savory of ideas: simply said, censure deprives each individual the capacity to adjudicate the good and the evil, surrendering it to a appointed authority.

That this process prevails in the field of healthcare can be a deliberate exception, or rather the heritage of the past. The bio-ethicist Tristram Engelhardt has brilliantly described the formation in every society of a group of “healers,” namely a “moral and intellectual elite, i.e. a group of individuals who 1) own complex technical knowledge, and a special dedication 2) to help people who are threatened by illness, deformity, and premature death and 3) to preserve and increase professionals’ skills.”<sup>24</sup>

This is not the place to delve in the complex host of ethical questions raised by Engelhardt; still it is worth to quote his characterization of the patient as a “stranger

<sup>20</sup> H. Disney (ed.), *Impatient for Change*, (London: The Stockholm Network, 2004), p.116.

<sup>21</sup> “Should Pharmaceutical Companies Provide the Public with More Information on Prescription Medicines?”, *A PatientView Report*, June 2002.

<sup>22</sup> P. Kohout, “Europe’s Veterinary Health Care”, *TechCentralStation*, December 9, 2004, <http://www.techcentralstation.be/120904.html>.

<sup>23</sup> R. Coase, “The Market for Goods and the Market for Ideas”, *American Economic Review*, 64, 1974, pp.384-391. For a discussion of the subject of this

paper, see the interview by Thomas Hazlett for *Reason*, available on the web at <http://reason.com/9701/int.coase.shtml>.

<sup>24</sup> H.T. Engelhardt, Jr., *Manuale di bioetica*, Milano: Il Saggiatore, 1999, p.309.

in a strange land.” “an individual in an unknown territory, who doesn’t precisely know what is to be expected, and how environment may be controlled.”<sup>25</sup>

Under this respect, information—particularly in the instance of more substantive matters than the use of a particular drug—plainly raises serious ethical issues: “moral problems arise if you have a high concept of liberty. Those who especially care about safeguarding self-determination, probably desire a complete information, even though that may possibly result in harm.”<sup>26</sup>

If, in considering the appropriateness of full information about each and every kind of treatment we enter a veritable minefield, still the issue is remarkably simpler when we face the need of widen the range of sources of information relating to the availability of medical preparations.

This is not meant to purposely undermine the trust between the patient and the physician: rather, it entails adding a further source of information to those already available.

Recently David A. Kessler, former chief of the U.S. Food and Drug Administration, conceded to having been mistaken in opposing, during his tenure, the widening of the number of conduits for direct information from the industry to patients: from an educational standpoint, in the view of Mr. Kessler, this would entail several benefits.<sup>27</sup>

The International Alliance of Patients’ Organization has recently issued a policy statement on “health literacy,” signaling a worrying lack of knowledge on the part of patients.<sup>28</sup>

No legislative proposal is advanced, but it seems obvious that no knowledge is possible without access to information: allowing direct information from drug makers would create in fact an opportunity of access to sources of information that today is only a partial one. The path to follow consists then

in allowing the customer (that is, the patient), whenever he so desires, to draw up an inventory of the available information, not as a substitute, but as a complement of those provided by the medical practitioner.

The laws in force, besides, do not seem to be compatible with Article 3 of the European Charter of Patients’ Rights, which states: “Every individual has the right to access to all kind of information regarding their state of health, the health services and how to use them, and all that scientific research and technological innovation makes available.”<sup>29</sup>

Moreover, two important points add to the drive to amend the European regulatory framework: the widening use of the Internet, and the emergence of a widespread pattern of corruption among physicians.

Internet access is increasingly common in the Old Continent: whereas in March 2000 only 18 percent of European families had access to the Internet, in December 2001 this figure had reached 38 percent. As of today, it is reasonable to estimate that at least 50 percent of the whole European population above the age of fifteen makes use of the Internet at home, at school or in the workplace.

At the same time, we have witnessed a veritable boom of health issues-related websites, often recommending “alternative medicine” treatments or questionable preparations. In 2004 the *Journal of Medical Internet Research* has conducted a survey of such websites, remarking that in 97 percent of the instances surveyed there is a clear lack of some basic information necessary to a proper use of the recommended product.<sup>30</sup>

Absurd recommendations do abound: as an example, some websites claim that a well-

<sup>25</sup> H.T. Engelhardt, Jr., *Manuale di bioetica*, p.312.

<sup>26</sup> H.T. Engelhardt, Jr., *Manuale di bioetica*, p.340.

<sup>27</sup> R. Misra, “Ex-FDA chief recants on drug advertising”, *The Boston Globe*, April 17, 2002.

<sup>28</sup> See *The Patient’s Network, Promoting patient-centred healthcare around the world*, June 18, 2003.

<sup>29</sup> See European Charter of Patients’ Rights at [http://home.online.no/~wkeim/files/european\\_charter.htm](http://home.online.no/~wkeim/files/european_charter.htm)

<sup>30</sup> M.Walji, S. Sagaram, D. Sagaram, F. Meric-Bernstam, C. Johnson, N. Mirza and E.V. Bernstam, “Efficacy of Quality Criteria to Identify Potentially Harmful Information: A Cross-sectional Survey of Complementary and Alternative Medicine Web Sites”, *Journal of Medical Internet Research*, 6, 2004 [<http://www.jmir.org/2004/2/e21>].

known mood-altering drug, namely Prozac, can inhibit the craving for food, and can thus significantly contribute to a personal diet. But this suggestion conflicts with the recommended usage of this medical preparation. Regrettably, while these “outlaw” websites’ continued existence is not threatened, drug-makers, in this instance Ely Lilly, are not allowed to counter their false claims by means of a proper informational campaign.<sup>31</sup>

Similar considerations also apply to the rampant spread of counterfeit medical products sold on the web.<sup>32</sup>

A second factor that can be mentioned in support of a further liberalization consists in the recent outrageous cases of a number of medical practitioners who allegedly accepted “gifts” and “favors” from the pharmaceutical industry in exchange of their prescribing to their patients the products of the munificent drug-makers.

These cases are significant not only in view of the resulting loss of trust in the medical profession, but also—and more importantly—because their “institutional” cause is plain: the corruption of the physician by the industry is perfectly rational, as the latter is prevented to directly inform the patient of the products it markets.

When the medical practitioner is the only link between producers and consumers of a particular product, it is obvious that the former will endeavor to convince in every way the physician of the merits of their offering.

Liberalizing information and breaking the monopoly on health currently enjoyed by the medical profession could have a moralizing effect on the physician themselves. In a free

information market, in fact, the industry and the patients would be able to communicate directly, making corruption a less rational proposition.

There is a last, substantial counter argument to a free dissemination of information: since most medical products are provided through the several national health services, increasing their demand by virtue of advertising could bankrupt the already ailing finances of the welfare state. In fact, the major trend in Europe is not only to limit the amount of information to patients, but also to check health spending in general, and drug spending in particular.<sup>33</sup> Now, such an argument may contain a grain of truth: still it could be objected that the growth of health spending is but a warning sign of a physiological problem, namely the unsustainability of the welfare state itself. The remedy should thus be aimed to the disease, and not to its symptoms.

At any rate, the claim that advertising is correlated to a larger drug consumption has always been dubious. As Jeremiah Norris states: “There is no empirical evidence to support the notion that DTCA increases overall usage of pharmaceutical products, or is a direct cause of increases in health expenditures.” Quite the opposite: “There is ample evidence that EU’s policies on its neglect of innovation are causing long term consequences to its international competitiveness.”<sup>34</sup> consequences which, obviously, can be expected to be negative. The new European Commissioner to Industry, Gunter Verheugen, seems to be aware of this, stating that the issue of patient information will shortly be confronted by his office.

An executive of a large pharmaceutical multinational, Merck’s Per Wold-Olsen, has

<sup>31</sup> As an example, see <http://helpuniversity.com/pharmacy/weight-loss/phentermine-prozac-for-weight.html>. For a thorough discussion of this issue, see T. Evans, A. Mingardi and S. Pollard, *Why Greater Freedom of Information in European Healthcare Could Save Lives and Money*, (Bruxelles: Centre for the New Europe, 2004).

<sup>32</sup> See G. Satchwell, *A Sick Business. Counterfeit Medicines and Organised Crime*, (London: Stockholm Network, 2004), pp.7-14.

<sup>33</sup> See P. Pamini, “La tassazione predatoria del farmaco”, *IBL Briefing Paper*, n.12, [http://brunoleoni.servingfreedom.net/BP/IBL\\_BP\\_12\\_Sanit%C3%A0.pdf](http://brunoleoni.servingfreedom.net/BP/IBL_BP_12_Sanit%C3%A0.pdf)

<sup>34</sup> J. Norris, “Preventive Medicine: How Information can Modernize EU Healthcare”, *EEI Policy Paper*, n.1, <http://www.eei.net.org/whatwedo/analysis/EEIPolicyPaperOCT04.pdf>, pp.15-16.

recently condemned the outrageous situation that in fact prevents the industry to disseminate any information, even when based on articles published on peer-reviewed scientific journals, while every quack can have his own say unhindered. Moreover, Wold-Olsen added, an informed patient can act in a timely fashion on an ailment whose symptoms he is able to recognize, dealing with viruses and bacteria when they still haven't weakened his organism. All things considered, the national health system can be reckoned to gain from a reduced number of hospitalizations. In support of his claims, Wold-Olsen quotes a number of instances, among which the 12 million of European women affected by osteoporosis (only 2.5 million of whose are aware of the necessary and available therapies); or the case of statins, a class of drugs available since more than 15 years ago, effective in reducing the risk of heart attack and amputation caused by cholesterol. In fact, only half of the Europeans in need of this class of drugs actually avails itself of them. "Ignorance can kill" wrote Wold-Olsen who, to describe the current state of affairs, coined the phrase "Patient Information Deprivation Syndrome."<sup>35</sup>

### Conclusions.

Advertising does not influence people's behavior: it simply presents, in a way aimed to grab their attention, useful information about the medical products developed by entrepreneurs. After all, Italians are among Europeans the more distrustful of the information provided by the industry, i.e., advertising: just 36 percent of Italians deems advertising to be reliable, as opposed to 62 percent of Swedes, 63 percent of the French, and 68 percent of Britons.<sup>36</sup> From the standpoint of the opponents of free information, then, our country is a sort of paradise: why, then, in spite of the "maturity" exhibited by our citizens, should

we continue to forbid every form of advertising?

Advertising is an essential tool for any enterprise, and thus for the consumers' welfare: it is the instrument through which the latter become aware of the goods which the former can make available.

To claim that the situation is essentially different in the case of medical products (with the exception of life-saving drugs), focusing on an allegedly different moral status of human health when compared to every other good provided in the market, means to adopt a *sciamanic*, as opposed to an *individualistic* view of the issue.

This view entails the belief that our bodily health must unavoidably be achieved through the mediation of a third party (modern and scientific heir of the ancient faith-healers) and the successful healing must put aside individual opinion.

Besides, the ban on patient information is contrary to European policy on other fronts: after the Lisbon summit, Europe set for itself the worthy aim of making its economy more competitive. Member States agreed on the "strategic importance of full exploitation of new information technologies in the public administration of health, for the benefit of the citizen as consumer of both health care services and health information." The ban on direct information causes many European patients to draw (mistaken) information from a number of websites, or to get (reliable) facts from the U.S. websites of those same multinationals that are muzzled in the European Union. This causes a twin short-circuit: the one between good intentions and bad results in the first case, and the one between rhetoric and reality in the second.

To restrain the freedom of the pharmaceutical industry to directly inform patients entails a limitation in the opportunity for patients to gather information and take knowledgeable decisions about their health.

<sup>35</sup> P. Wold-Olsen, "Ignorance Can Kill", *The Wall Street Journal*, August 30, 2004.

<sup>36</sup> See H. Disney, *Impatient for Change*.

# ISTITUTO BRUNO LEONI

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