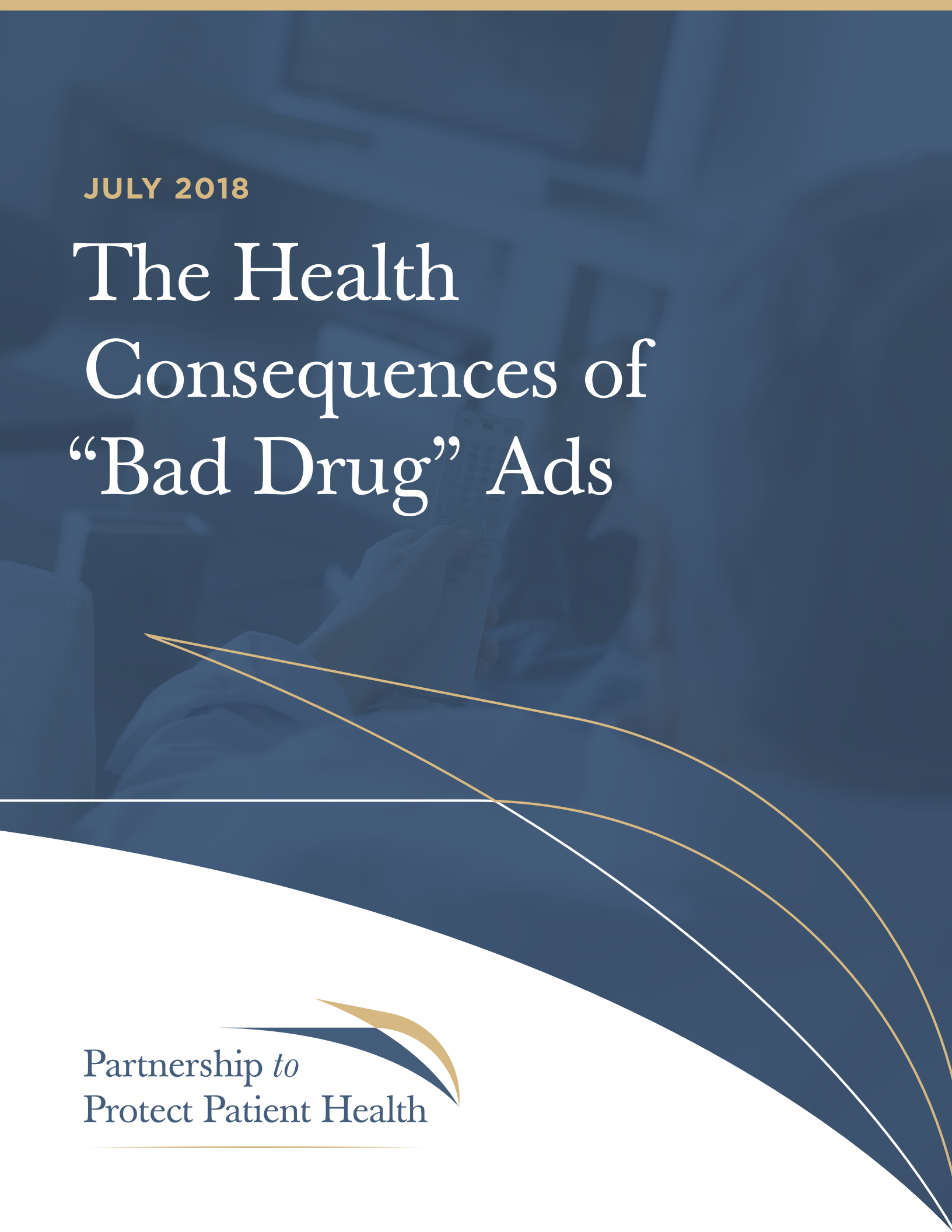

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The Health Consequences of "Bad Drug" Ads

Partnership *to*
Protect Patient Health

Introduction

The advertisements are all over television.

"This is a medical alert for a bad drug," an authoritative voice says. Names of prescription medications flash in red. The warning continues, rattling off cringe-worthy medical complications and injuries, "even death." On screen appears a non-responsive patient being whisked away in an ambulance. The images fade into a telephone number and directions to "Call now for a free confidential consultation."

Was that an advertisement or a public service announcement? Was it on behalf of the government? It's often hard to tell.

The truth is that these drug-injury advertisements perpetuate misinformation about medications approved by the Food and Drug Administration (FDA). They frighten consumers with an endless list of possible harms for common prescription medications; then they swoop in with promises of a big payout. And they aren't limited to television; the ads also run on the radio and appear on social media.

These ads overlook important details. They don't mention the FDA-approved indication for the treatment. They don't take into account the specific health history of individual patients. They also don't consider that patients and their doctors have determined that the medicine's potential risk is outweighed by its benefits—like not having a heart attack or stroke.

But that fact may not occur to worried consumers. Recent survey results found nearly three-quarters of respondents had seen an advertisement about litigation for a specific medication. More than half of those surveyed said they would be "very concerned" if they saw a law firm's ad about a drug they were taking. One in four said they would stop taking it immediately, without consulting their doctor.[1]

With little-to-no regulation, "bad drug" ads are undermining the quality of care in two ways. First, they are undermining the trust patients have in their physicians, and, according to FDA data, they're influencing patients to abandon their prescription medications. That can cost them their health and, in extreme cases, their lives. And second, by increasing administrative and litigation costs without improving quality of care, these ads are driving up health care premiums and costs for everyone.

How "Bad Drug" Commercials Work

Deceptive "bad drug" advertisements were designed with one goal in mind: to convince viewers to call a toll-free number. Once the person is on the line, a call center operator follows a script to gather personal and health information. That may include an overview of his or her conditions and current medications.

Some people call at the prospect of compensation, but many may not realize who is on the other end of the line. Ads often appear to be about health information—on behalf of the government or a reputable medical provider—or an unnamed law firm.

Thousands of callers later, the organization taking the calls bundles the information and sells it. Known as aggregators, these organizations often coordinate with trial lawyers to mine consumers' information.

In other cases, law firms run their own ads, cutting out the aggregator and compiling the information themselves. The lawyers then organize the data into parcels of potential plaintiffs for the sole purpose of suing pharmaceutical manufacturers. Their goal: achieving a major settlement and collecting a hefty contingency fee.

Regardless of the model, there's money to be made. Hedge funds have backed legal disputes for years, and mass tort litigation is being touted as a new asset class for investors. In short, sophisticated lead investors fund plaintiffs' litigation, then recoup their investment plus up to 25 percent interest from the settlement. More plaintiffs make for stronger cases—and larger payouts.

Drug-injury advertising is pervasive, especially on late-night television. Aggregators and attorneys spend hundreds of millions of dollars annually on negative ads, and that amount that increases every year.

Seniors are especially susceptible, given their television habits. The Nielsen Company reports that adults aged 65 and older watch more than 48 hours of television per week.[2]

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Impact on Consumers

Regardless of whether or not they call the toll-free number, consumers may lose confidence, grow scared of their medicine or stop taking it altogether. This can have dire consequences.

Consider the drugs most targeted by "bad drug" advertising in 2016: blood thinners and drugs to treat diabetes, heartburn and certain cancers. These advertisements aren't targeting treatments for the sniffles, but for serious, chronic and sometimes life-threatening conditions.

"Bad drug" advertisements warn of injuries caused by taking certain medications, yet they fail to mention that abruptly stopping them can also lead to adverse health outcomes. The Preventive Cardiovascular Nurses Association, in testimony before Congress, expressed its acute awareness of the life-threatening complications that occur when patients stop taking their medication without consulting their health care provider.[3]

Nurses have firsthand experience caring for patients who have refused or discontinued prescribed medicines because they were frightened by careless legal advertising. And, they have witnessed the horrific results—the exact problems those medicines were prescribed to prevent: severely debilitating strokes and deaths.[3]

Drug-injury advertisements also have a secondary impact—they drive a wedge between patients and their doctors. The ads may interfere with patients' adherence to their treatment plan. And, after seeing so many warnings on television about a prescription medication they are taking, patients may begin to distrust their doctor, questioning their recommended course of care.

Medical devices are subject to similar negative advertising. While patients can't always stop using a device as easily as they can stop taking a medication, fearmongering about medical devices can have similar effects. Advertisements about "defective" devices create fearful consumers who become skeptical of the care they receive from highly trained medical professionals, all driven by trial lawyers with no medical expertise.

Without Proper Oversight

Promotional content about prescription drugs is nothing new. Drug manufacturers advertise their products on television and in print, but there's a safeguard—the FDA carefully regulates prescription drug advertising.

Manufacturers are limited in what they can say and are required to mention certain information, including all the risks of using a drug. The FDA can ask the drug company to remove the ad if it is false, misleading or lacking in balance.

While the FDA oversees advertising for prescription drugs, the Federal Trade Commission (FTC) oversees most other advertising. If the FTC receives a complaint that an ad is false or misleading, it can investigate and require the ad's sponsor to correct the ad or pull it from broadcast. But, by the agency's own admission, it has never pursued an investigation or action against mass tort attorney ads.

All states prohibit false and misleading attorney advertisements, and attorneys are required by state bar associations to ensure their advertising is "honest" and "not fraudulent." Yet the truth is often sensationalized, with some content being more deceptive than other content.

Further, a large percentage of drug-injury advertisements are arranged by aggregators or third-party entities. The advertisements feature "non-attorney spokesmen," allowing law firms to skirt attorney ethics rules. Still other ads remain silent about the sponsor, which can make it difficult to identify an attorney advertisement or to hold anyone accountable.

What recourse do concerned consumers have? It's often difficult to know. Consumers can file a complaint with their state's consumer services unit or attorney general. These state officials could investigate under unfair trade practice laws, but that would lead to inconsistent discipline, if a case is built at all.

Without proper oversight "bad drug" ads leave Americans frustrated, scared and unsure where to turn.

"Bad drug" advertising has increased by more than 60 percent since 2008, **costing approximately $149 million in 2016.**[1]

Educating Patients

Education is critical. Equipping consumers with accurate information about the design and intent of misleading commercials can help them become more savvy patients. Likewise, educating consumers about the implications of stopping their medication before consulting a doctor could reduce the amount of unintended, but tragic results.

Reviewing proposals such as the American Medical Association's resolution, which supports a legislative or regulatory requirement to ensure ethical attorney advertising, can help regulators and policymakers chart a pathway forward. Certain specific measures are essential:

INCREASING TRANSPARENCY

Americans calling the advertised number may not realize they are sharing their personal information with a private entity whose goal is to compile and sell data to law firms so they can profit by suing drug manufacturers.

ADDING A WARNING OR DISCLOSURE

These advertisements don't explicitly tell patients to cease taking their medications, yet FDA data demonstrate that viewers are doing just that—often to their detriment.

Ads should require warnings that advise patients to talk to a qualified medical professional before changing their medication. Warnings should be large enough to read and said slowly enough to be understood.

Advertising should require information about who is sponsoring the ad—similar to what drug manufacturers and politicians have to do today.

Even the Federal Trade Commission cited that it "will generally favor disclosure, if such disclosure will mitigate the injury."[4]

ENCOURAGING SHARED DECISION-MAKING

Patients should understand the full array of benefits and risks before beginning any medical treatment. This conversation should occur between patients and doctors.

Ads might remind patients that all medical decisions should be made in consultation with their health care provider.

PREVENTING RULE AVOIDANCE

Advertisements sponsored by lawyers should not be disguised through the use of "non-attorney spokesmen."

Moving Forward

Deceptive "bad drug" advertisements reveal a lapse in regulation on what is otherwise a highly regulated topic—patients and prescription drugs. Sensationalized attorney advertisements scare and mislead Americans, undermining the physician-patient relationship, deterring an informed course of care and putting patients at unnecessary risk.

To steel patients against fearmongering that has very real medical consequences, policymakers must revisit how these advertisements are developed, delivered and overseen.

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Partnership *to* Protect Patient Health

The Partnership to Protect Patient Health is a coalition of health care stakeholders that raises awareness among policymakers and the media about the implications of misleading "bad drug" commercials. PPPH supports patient safety and advocates for responsible practices.

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