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DRUG AND DEVICE BULLETIN

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Bad for Your Health: Lawsuit Advertising Implications and Solutions

Shook, Hardy & Bacon Partner [Cary Silverman](#) has authored a report for the U.S. Chamber Institute for Legal Reform examining the effects of advertising soliciting plaintiffs for lawsuits targeting prescription drugs and medical devices. In *[Bad for Your Health: Lawsuit Advertising Implications and Solutions](#)*, Silverman documents the surge in lawsuit advertising over the last decade—for example, spending on legal-services television ads is expected to approach \$1 billion in 2017—as well as the techniques plaintiffs' attorneys and lead generators employ that mislead patients and the public. Deceptive tactics covered include:

- Implying a connection with the U.S. Food and Drug Administration by using the phrase "FDA Warning" or displaying the agency's logo;
- Suggesting that particular drugs or medical devices have been recalled despite the lack of any such action by the FDA or the manufacturer; and
- Warning that use of the drug or device can result in dire consequences without reliable scientific support or without indicating the rarity of side effects or complications.

Silverman also explores the adverse public health effects of such advertising, presenting "mounting evidence that misleading information and exaggerated claims made in lawsuit ads prevent people from seeking treatment or lead them to stop taking a prescribed medication without consulting a doctor."

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The report concludes with specific steps for state and federal government oversight that could protect the public.

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