# The Journal of Medical Activism

Volume 11 Number 2

September 1996



recent issue (August 28, 1996) of *National Speed Sport News (NSSN)*, a major motor sports publication that tracks a variety of auto racing.

included a guest editorial titled "Loves Racing, Hates Tobacco," written by DOC founder Alan Blum, MD. The editorial sought to decipher the fact and fiction surrounding the recent Food and Drug Administration rules for regulating tobacco advertising and promotion, including what impact the rules may have on motor sports. The editorial is reprinted here as a means for providing discussion about the FDA rules and their potential impact.

HOUSTON — Although it was predicted (NSSN, May 22; "There's Just Smoke Here, Not a Fire") that President Clinton's proposal to combat underage tobacco use would have no impact on auto racing, the steps listed in the highly publicized plan put forward last week do indeed include a ban on brand-name sponsorship of sporting events.

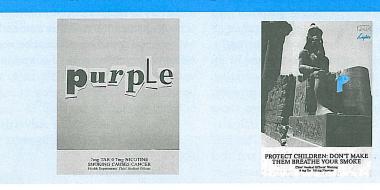
As the individual who set this ball in motion in 1985 (when as editor of the New York State Journal of Medicine I called for a ban on televised auto racing as long as tobacco companies continued to circumvent the law prohibiting brandname advertising of cigarettes on TV (NSSN, Aug. 1985), I am pleased that the racing community as a whole is having to

cont. on page 4

## In this issue...

FDA Regulations	1
Loves Racing, Hates Tobacco	1
Health Education Materials	6
Order Form	7
DOC Leader Gets Service Award	8

## FDA Regulations: Sorting Out the Fact and Fiction



Tobacco companies have been able to maintain their presence in the mass media after advertising restrictions through the creative use of color and text.

n August 23, 1996 the Food and Drug Administration (FDA) published its final rule on tobacco in the Federal Register one year after announcing that it will regulate the sale and distribution of cigarettes and smokeless tobacco to children and adolescents. This regulation, supported by President Clinton, comes after a public comment period that generated more than 700,000 pieces of mail—more comments than at any other time in the history of rule making.

DOC also submitted comments. Although the period for commenting on the rules has expired, our comment period continues, and we welcome open discourse. Despite the fact that some of our views may not meet the criteria of conventional tobacco control thinking, we trust that our experience in the tobacco issue for two decades and our efforts to challenge mainstream thinking will be considered.

In at least three instances, policy initiatives have been an effective means for counteracting tobacco use and its promotion. First and foremost, clean indoor air regulation and legislation have

greatly reduced smoking in public places, most notably air craft, sports stadia, hospitals, schools, and office buildings. Second, the frequent counteradvertisements that appeared on television between 1967 and 1970, as required by the Federal Communications Commission during a period when the Fairness Doctrine was still in effect, appears to have been instrumental in flattening cigarette sales during those years. Additionally, although a defensive policy, opposition to tobacco industry sponsored legislation to preempt local communities from tackling the tobacco problem has stymied industry efforts, exposed industry allies, and on occasion even united health forces. Government also bears a responsibility to monitor public health problems through epidemiologic research and the publication of information. Other policies, such as excise taxes, advertising bans, and restrictions of teenagers to tobacco have struck us as misguided as they are popular.

## **Following Rules and Regulations**

promotion. First and foremost, clean The following outlines the provisions indoor air regulation and legislation have of the rule announced by the FDA last

FDA, from page 1

month to regulate the sale and distribution of cigarettes and smokeless tobacco to children and adolescents.

## Restricting Access to Children

The rule makes the sales of cigarettes and smokeless tobacco products to children and adolescents younger than 18 a violation of federal law. Currently, young people purchase an estimated \$1.26 billion of tobacco products annually. Despite law in all 50 states that prohibit sales to minors, numerous studies show that adolescents have little difficulty purchasing tobacco products. The rule defines "minimum age" as 18, and that retailers must verify that purchasers are 18 and older by checking "the identification of anyone 26 or younger. Acceptable identification could include a driver's license or college identification card."

The regulation also establishes 20 cigarettes as the minimum package size, thus eliminating the sale of single cigarettes or "kiddie" packs. The rule

The Journal of Medical Actitivism is a publication of Doctors Ought to Care. DOC is a coalition of health professionals and other concerned individuals helping to educate the public, especially young people, about the major preventable causes of poor health and high medical costs. Our focus is the "killer habits" with a particular emphasis on counteracting the promotion of tobacco and alcohol. DOC's professional aim is to tap the highest possible level of commitment and involvement in their communities from physicians, medical students, other health professionals, business leaders and all other citizens. DOC is unique among health organizations in being solely concerned with health promotion, and has pioneered the concept of paid advertising aimed at reducing lethal lifestyles. For more information write:

> Doctors Ought to Care 5615 Kirby Drive, Suite 440 Houston, TX 77005 (713) 528.1487

Luke Burchard, M.D.
Chairman
Joel Dunnington, M.D.
President
Eric Solberg
Executive Director, Editor

bans the use of vending machines "in almost all circumstances," making exception for those in "locations in which the retailer or operator ensures that no person younger than 18 is present or negroing the permitted to enter at any time." The rule in also bans self-service displays, requiring cretailers to keep tobacco products behind a check-out counters. While mail order sales of tobacco products will not be regulated, mail order redemption of coupons for free products is included in the rule, as is the prohibition of free samples.

### Reducing Appeal of Advertising to Children and Adolescents

Briefly, the final regulation generally limits tobacco advertising in all existing media forms to a black-and-white, text-only format, "eliminating the imagery and color young people find so appealing." Outdoor advertising prohibited within 1,000 feet of public playgrounds, elementary schools or secondary schools.

Advertisements in publications read primarily by adults and advertisements placed in adult-only locations are exempt from any advertising restrictions. Tobacco companies will not be permitted to sell or distribute promotional items such as t-shirts, caps, and sporting goods identified with tobacco products, such as through the use of a brand name or logo. Similarly, brand names, logos, and other identifiers of tobacco products cannot be used in sponsorship of musical, cultural, and other events or on teams and entries. However, sponsored events and entries in the name of a tobacco company may continue.

## • Educating Young People About Health Risks

The rule will "require tobacco manufacturers to establish and fund a national public education campaign to counter the effects of the pervasive advertising that for decades has influenced young people to begin and continue using tobacco products." This campaign, run primarily on television, will be the result of discussions between the FDA and major tobacco companies.

### FDA: Where We Stand

DOC has commended the current

FDA commissioner, David Kessler, MD, for addressing the serious public health problems caused by tobacco use. His stance, based on establishing nicotine as a drug and cigarettes as a drug delivery device, is in no small measure due to the long-standing efforts of John Slade, MD and his work with the Coalition on Smoking OR Health.



Humor, which has escaped notice of antismoking advocates, is a feature of many advertisements.

We support the spirit and intent of the FDA's rules to reduce the appeal of cigarettes and smokeless tobacco to children and adolescents.

In addition to our general support of the FDA's initial involvement in the tobacco issue, we have expressed concerns with major portions of the proposed rules. We outlined our comments into general areas that we feel are of importance, and asked that they be seriously considered by the FDA.

FDA, from page 2

#### **Nicotine Addiction**

While the adopting of the proposed rules, or a portion thereof, is directly related to the FDA's jurisdiction over "nicotine-containing cigarettes and smokeless tobacco products," it should be understood that the tobacco industry has successfully adapted to every regulatory strategy designed to reduce cigarette consumption, and there is little reason to believe that it could not also meet the nicotine challenge.

From the late 1920's (when one of the earliest articles reporting a relation between smoking and lung cancer was published in the New England Journal of Medicine) to the mid-1960's (when the first report on smoking by the Surgeon General appeared), cigarette advertising in both the lay and medical press featured health claims designed to allay anxiety about smoking. The creation of various cigarette filters in the 1950's was a direct response to public concern about lung cancer spawned by the publication of the first major

epidemiological studies on smoking and disease. Low-tar cigarettes emerged in the 1960's in reaction to renewed questions by the Surgeon General. Light and ultra-light brands were introduced during the fitness craze of the 1970's.

In particular, the hoped-for reduction in deaths from lung cancer as a direct consequence of a reduction in tar levels has proved illusory. Such a strategy has enabled the tobacco industry to become, in effect, our leading health educator, as increasing numbers of consumers have switched to low-tar brands—rather than stopping smoking—in the misguided belief that they can smoke more safely. Ironically, from the FDA's perspective, the introduction of ultra-low-nicotine cigarettes may facilitate the initiation of smoking or an increase in smoking by those who already smoke, based on the

consumer belief that it is now somehow "safer" and "approved" by the FDA.

The FDA's position on this is also confusing. Knowing that everyone would laugh if the FDA acknowledged just having discovered that cigarettes are addictive and can cause disease, the FDA approached the issue by creating a revisionist scenario whereby the companies knew for decades that nicotine is addictive and that such purportedly secret knowledge enabled them to conspire to keep consumers addicted to nicotine. In their investigation into the





The above ads, selected from tens of thousands held by the DOC archive, illustrate ways in which cigarette advertiseing has been transformed around the world. For instance, every school child in England and other countries can recognize these ads for Silk Cut through the games and puzzles created in the advertisements.

addictive nature of tobacco products, the FDA highlighted internal tobacco industry documents that have surfaced during the past three years. In doing so, unfortunately, the FDA has discounted decades of research by the scientific community, not to mention the tobacco industry's own reports about its manufacturing process that has been published in numerous, widely circulated tobacco trade journals.

The FDA has also ignored the financial self-interest of pharmaceutical companies in promoting pure nicotine products the FDA has approved for smoking cessation. While criticizing the alleged "graduation process" of smokeless tobacco manufacturer United States Tobacco (UST) "designed to encourage users to progress from low-nicotine brands to high-nicotine ones," the FDA is

endorsing the belief that the pharmaceutical companies' products can simply reverse the graduation process. To the contrary, the FDA in failing to acknowledge that the decades long quest for the holy grail of the safe cigarette (which consumed much of the smoking and health research efforts in the 1960s and 1970s through the National Cancer Institute and others) was at least as important in delaying or diverting attention from attacking the issue head on as the allegation of a secret conspiracy by the tobacco industry to keep people

hooked.

## Supply vs. Demand

Throughout the proposed rules, the FDA utilized the term "reducing demand." However, the majority of strategies introduced in the proposed rules and resulting final rules are designed to limit access to the supply of the product or restrict the advertising of the product. These strategies are prohibitionistic and fail to consider the tobacco problem

as a *consumer* issue, rather than solely as a health-related issue. Reducing the demand for tobacco products among children and adolescents involves reaching the minds of young people with the objective of *not buying* such products.

Additionally, there is an over-simplification throughout the rules to divide both the content and context of tobacco advertising into that which influences children and that which does not. The FDA rules have fallen into the trap of trying to define and prove how an advertisement influences a child. Any attempt to control the content of tobacco advertisements or context in which they are seen and perceived by children (as opposed to adults) is the equivalent of creating a Maginot Line.

FDA from page 3

## **Enforcement of Existing Laws**

The proposed rules failed to address the virtual lack of enforcement of existing federal laws regarding tobacco advertising and promotion. In the discussion of tobacco sponsorship of sports, for instance, the rules document that tobacco companies do so in order to promote tobacco brand names on television; yet neglect to discuss why the Public Health Cigarette Smoking Act of 1969 and the Comprehensive Smokeless Tobacco Health Education Act of 1986 have not been enforced. If the former law were enforced by the United States Department of Justice, including a \$10,000 fine per violation assessed to broadcasting corporations (i.e., translated into millions of dollars per auto race), the broadcasts of tobacco-sponsored sports in the United States would cease.

Similarly, enforcement of the FDA rules is not mentioned. In the section on restricting access to children and adolescents, the FDA acknowledges that "despite laws in all 50 states that prohibit sales to minors, numerous studies show that adolescents have little difficulty purchasing tobacco products." Does the FDA truly believe that in the face of this 50 state failure, it can send a federal solution to the rescue? Is their truth to the rumor that the FDA going to create a full-time smoke police force in order to enforce the rules?

#### Counter-advertising

The rules include a section regarding educational programs that involves working with tobacco manufacturers to provide a "public education program." While this section correctly cites the application of the Fairness Doctrine in the late 1960's as the period when per capita cigarette consumption declined significantly in the United States, it is not realistic to consider that a campaign run by the tobacco manufacturers would have any impact. Indeed, the tobacco industry has been running such a campaign for nearly two decades, complete with such slogans as, "We don't think kids should

smoke. It's the law." It appears the tobacco companies have a dream come true—justifying such advertising as a legitimate and tax-deductible educational program.

## The Tobacco Industry's Ability to Adapt

The most important factor in the FDA's attempts to counteract tobacco use and promotion is the fact that it has failed to deal with a moving target. In contrast to the static thinking of the FDA, the tobacco industry is a creative, dynamic global force. Efforts to curtail tobacco use have been met with an uncanny ability to overcome and circumvent legislation and regulation. Just as tobacco companies were able to ride out the health scares of the 1960's and 1970's by introducing lowtar, filtered cigarettes, the tobacco industry has also been able to circumvent restrictions on advertising and sports sponsorship. As other countries have passed legislation prohibiting tobaccosponsored sports, technology through satellite, cable, pay-per-view, and new personal digital satellite systems permits the viewing of tobacco-sponsored sports throughout the world at any time day or night. Tobacco companies are gradually shifting their sponsorship overseas knowing full well that the broadcasts of such events will reach an American viewing audience.

For two decades, fearful bureaucrats have politely ignored or looked down upon DOC's approach to encouraging a major mass media effort to reduce demand. But now, more than ever, we need to inject some sense, and even some nonsense, into this issue and laugh the pushers out of town. DOC



Some of the most creative advertisements are now available on the Internet.

Racing, from page 1

reflect on its relationship with the makers of Winston, Camel, Marlboro, Skoal, Copenhagen, Kodiak and other prominently displayed tobacco brands. And in spite of much grandstanding on the part of self-interested, tobacco-sponsored owners and drivers in NASCAR, CART, Formula One, NHRA, World of Outlaws, and other motor sports, I have no doubt that those who most value and appreciate auto racing will soon come to realize that racing should no longer be used as a means to promote tobacco use.

The silliest argument for continuing the relationship between tobacco companies and motor sports is that racing could suffer a serious financial blow with the forced withdrawal of sponsorship money. Apart from the obvious point that this suggests too strong a dependence on tobacco funding (or is it an addiction?), I think it is the responsibility of leaders in the racing community to remind the public that there are hundreds of sponsors. NHRA alone boasts more than 550, and more and more national companies are joining the sponsorship ranks each year as televised exposure increases.

Notice, too, in NASCAR's expansion into restaurant chains, clothing stores, and theme parks, the dramatically diminished visibility of Winston Cup logos. Does anyone doubt that TNN's name change of *Inside Winston Cup Racing* to *Inside NASCAR* was anything closer to an attempt to acquire a less tobacco-stained image, at

Racing from page 4

least in the eyes of the FDA and FCC regulators who get letters from do-gooder doctors like me?

The full-page scare tactic advertisements in NSSN and racing programs by ACESS (a tobacco industry front group if there ever was one) which declared "No Racing Today" if Clinton and the FDA get their way are sheer nonsense. In short, racing officials' parrot-like anger at big government regulators would carry more weight if their posturing weren't so transparently aimed at currying favor with R.J. Reynolds, Philip Morris, and US Tobacco.

Having vented my spleen at the misplaced loyalty of all too many people in racing to the tobacco industry, and racing's willful ignorance of the devastating health toll taken among its own ranks by smoking and chewing tobacco, I would be grudgingly agree with the NSSN May article that the presidential proposals are likely to have little impact on motor sports. And the reason is simple: I doubt anyone at the FDA has ever seen an auto race, much less attended one. Instead, they have relied on articles such as the one I wrote for the New England Journal of Medicine in which I reported that there were more than 5,900 Marlboro logos visible on TV in a single 90-minute race. Rather than urging the Justice Department to enforce the 1971 law prohibiting tobacco brands on TV (by means of costly fines of the broadcast networks for violating the ban, as I recommended), the FDA is trying to act tough with tobacco companies and sports bodies. The inevitable result will be that the FDA (itself an agency subject to political change) will wind up chasing a moving target.

Regardless of how much the racing community feels it owes tobacco companies for their infusion of sponsorship money, or how much it feels government ought not dictate who can or cannot accept such money, one shouldn't forget that the sole reason R.J. Reynolds and Philip Morris became associated with

motor sports 25 years ago was to circumvent the 1971 law banning tobacco advertising on TV. Thanks to the enormously increasing popularity of racing over the past two decades (without a doubt enhanced by the marketing genius of the tobacco industry), tobacco companies probably have more prime time (indeed, round-the-clock) brand name advertising impressions on TV than at any time in their history.

To the best of my knowledge, I am the only individual outside of the tobacco industry, the advertising agencies, and Joyce Julius (the Michigan company that monitors and calculates the TV exposure of brand names in motor sports) who tries to track the tobacco-TV sports connection. On weekends, it is literally impossible to measure the presence of tobacco brand names on TV because they are so often simultaneously on several stations, including TNN, ESPN, ESPN2, ABC, CBS, NBC, Prime Sports Network, not to mention the sports highlights on all the news programs.

Short of creating a "smoke police" force—paid for, I presume, by taxpayer funds—the government will be incapable of enforcing a ban on tobacco promotion in auto racing. Moreover, the loopholes in the proposed regulations are so big that I'm surprised anyone in the tobacco industry or motor sports could truly be worried. The rule simply prohibits brandname sponsorship—not corporate sponsorship-and with the exception of the Winston Cup, NHRA Winston Drag Racing, and the Marlboro 500, virtually every tobacco sponsorship has undergone a name or image change of some sort in recent years. The most obvious has been the replacement of the Camel name by Smokin' Joe. I have no doubt that if the FDA tries to stop Smokin' Joe, R.J. Reynolds will simply retain an entirely logo-free yellow or yellow and violet vehicle (dragster, stock car, motorcycle, and hydroplane), much as Brown and Williamson Tobacco Company (BAT) created Green Team and Player's in Canada has created a logo-free powder blue race

car. The Formula One circuit has been masterful at creating the international language of pure color and simplified logos in lieu of cigarette brand names. Thus, Marlboro has in many locations become merely a red and white strip, a universally recognized symbol for the world's No. 1 brand name product.

All of which is to say that the FDA proposals will do little if anything to reduce demand for tobacco products among young people, as evidenced by the seemingly draconian but actually meaningless attempt at a tobacco brandname ad ban in motor sports. Which is a shame, since the racing community itself ought to have shown more courage by now in ending its dependency on tobacco and alcohol sponsors; instead, it has merely played the hypocritical "just say no to drugs" theme to the hilt.

I should add that since writing my 1985 medical journal editorial ("Slaughter on Tobacco Road"), I have attended dozens of races, have become an avid reader of NSSN, and have developed a great respect for the drivers, crews, and racing community as a whole. And I have come to see the irony that it is tobacco companies who are dependent on motor sports for their brand names' credibility—not the other way around.



In several countries with strong restrictions on tobacco advertising, non-tobacco companies market their products with the same colors and images.

## HEALTH PROMOTION MATERIALS

#### VIDEOS \$100 EA.

## V1. MEDICINE VS. MADSION AVENUE, 1992, 25 min.

Winner of the 1994 International Health and Medical Film Festival for best film in Community Education, this humorous and offbeat documentary illustrates the political and social acceptance of the cigarette and provides a blueprint for engaging individuals in ending the most costly and devastating of all health problems.

# V2. SUIGENOCIDE: THE KILLING OF MINORITY GROUPS BY THE TOBACCO INDUSTRY, 1989, 56 min.

An in-depth view of how powerful tobacco companies target ethnic communities and people of color through advertising and sponsoring a variety of cultural events throughout the country.

# V3. CIGARETTES AND SPORTS: STRIKING OUT AGAINST TOBACCO, 1989, 50 min.

What do cigarettes and sports have in common, aside from big profits and illegal advertising on television? Discover how the tobacco industry and the broadcast media continue to circumvent the law prohibiting tobacco advertisements on television, and what you can do to help.

## V4. MCSMOKE THE TOBACCO KING AND NIKKI TEEN, 1989, 14 min.

This award winning video was produced by teenagers in Brooklyn, New York as a rap music video designed to help young people identify and laugh at the misleading images in tobacco advertising. Designed for grades 4 - 8. Curriculum guide included.

## V5. SMOKE THAT CIGARETTE, 1988, 51 min.

This film is about what it meant to smoke cigarettes: how it felt, how it looked, and how it dominated American pop culture for fifty years. You'll watch in amazement as tobacco executives discount leading researchers. Laugh away at the nostalgic advertisements and television shows.

#### SLIDE PRESENTATION \$100

# T1. *TOBACCO SLIDE PRESENTATION*, 1996, (70 slides and curriculum guide)

Based on Dr. Alan Blum's first presentation in 1974, these slides were chosen from a collection of more than 10,000 and include a history of health claims in tobacco advertising and the evolution of tobacco advertising in popular media. The slides also include a variety of images from tobacco sponsored events throughout the country. Appropriate for middle school children and can be adapted for use in training health professionals, teachers, and others.

#### POSTERS \$5 EA.

- P1. I Smoke for Smell
- P2. They'll Really Know You're Smoking
- P3. Barfboro Chunks
- P4. Virginia Slime
- P5. Newcorpse



## T-SHIRTS \$15 EA. (Please indicate size)

T1.	<b>Barfboro Barfing Team</b>	LG	XL
T2.	<b>DOC's Deck-O-Butts</b> M	LG	XL
T3.	Emphysema Slims	LG	XL

## **STICKERS**

- S1. Love, DOC (.01 ea.)
- S2. Out of Order (.02 ea.)
- S3. Marlboro Causes Zoo Breath (.10 ea.)
- S4. Smoking Eats Your Heart Away (.10 ea.)
- S5. Magazine Sticker (.10 ea.)
- S6. Barfboro (.15 ea.)

# CAUSES O ZOO BREATH DON'T SMOKE

## **BUMPERSTICKERS \$2 EA.**

- **B1. Barfboro Chunks**
- **B2. Dead Man Chew**
- **B3.** Emphysema Slims Tennis

#### OTHER ITEMS

- O1. **DOC's Deck-O-Butts Trading Cards** \$2.50/set of 7 \$7.50/collector set
- O2. Barfboro Lunch Bags (.25 ea.)





## **DOC ORDER FORM**

				1
		1		
	, .		MACH	
	-	,		
VAYS TO ORDER		<u> </u>		
BY MAIL: DOC, INC.	BY FAX:		BY PHONE:	
P.O. BOX 540267 HOUSTON, TX 77254-0267	713-528-2	2146	713-528-1487	
METHODS OF PAYMENT		-		
CONTRACTOR CONTRACTOR AND ADDRESS OF THE ADDRESS OF	CHECK OR MONEY ORDER PAYABLE TO:		SE ORDER	.3
	OOC, INC.	#		
RD NUMBER	BILL TO:			
ature Expiration				0.41
Postage & Handling Up to \$50 \$3.00 \$50 - \$100 \$5.00 \$100.01 - \$200 \$10.00	SHIP TO:			
\$200.01 - \$400	TEL: (	)		
\$55.00	FAX: (	)		

## **DOC** Leader Gets Service Award

The American Academy of Family Physicians (AAFP) recently recognized Dr. John "Rick" Richards for his longstanding participation in the National Congress of Family Practice Resident and Medical Students (NCFPR). Dr. Doug Henley, AAFP president and long-time friend and colleague of Dr. Richards, presented the award at the opening session of the conference. (Dr. Richards was also honored at the Kansas City Royals baseball game that evening, and threw out the first pitch along with Kevin Nealon of the famed TV show "Saturday Night Live.")

Dr. Richards, after meeting DOC founder Alan Blum, MD who presented at the NCFPR in 1977, went on to form the first state chapter of DOC in South



(From left): Dr. Luke Burchard, MD (DOC Chairman), Kevin Nealon (Saturday Night Live), Dr. Rick Richards, and Erik Vidstrand (National Coordinator).

Carolina. Working through the South Carolina Family Practice Residency Association, Dr. Richards began promoting DOC's positive health strategies throughout the state. In 1978, Dr. Richards joined DOC's Board of Directors, where he served as president for 12 years, and helped the organization grow into an international agency. Congratulations Dr. Richards! DOC



**Doctors Ought to Care** 5615 Kirby Drive, Suite 440 Houston, Texas 77005 (713) 528.1487

### Address Correction Requested

Chairman President Vice President Secretary Treasurer Immediate Past-President Paul Paulman, MD

Luke Burchard, MD Joel Dunnington, MD Mark Glassner, MD Chris Shank, MD Adam Goldstein, MD Non-Profit Org. U.S. Postage PAID Houston, Texas Permit No. 6704

