

Social Media: Good, Bad or Something In-Between?

March 13, 2024

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Most people will have different responses to that question and it also may depend on the specific day that you ask! This article is not intended to sway you in one way or another, but to be another resource to help remind and educate you about the influence of social media and what organizations, not just enforcement agencies, are considering regarding its use.

Social media as we know is not going anywhere any time soon. Instead, its use keeps expanding, along with its users and audience, as well as the scrutiny that surrounds it. The FDA, DOJ, FTC, OIG, state and federal privacy laws/regulations, and now the Continuing Medical Education Coalition (Coalition) have all provided guidance, guidelines, and recommendations.

The Coalition has released a “[Social Media Compliance Guide](#)” (Guide) to continuing medical education providers, supporters, and beneficiaries all contributed. The Guide appears to not only emphasize what we have read and seen by some of the aforementioned agencies but also provides some additional considerations. Although the specific intent of the Guide is to address the use of social media in an educational context (e.g., independent medical education, accredited continuing and non-accredited education programs), there are examples, definitions, guidance, and recommendations for organizations and manufacturers who manufacture, sell market or distribute a drug, device, biological, or medical supply for patients, including the life sciences industry to consider overall.

The purpose of this article is to not necessarily summarize the Guide but to provide a list of considerations for interacting on social media and to emphasize the importance of compliance, training, and general control of an organization's activities, including those related to continuing education. Please note, as indicated within the Guide, the Guide is not meant to address promotional activities or compliance with general FDA advertising and promotional laws, regulations, or guidance. Below are some general issues and questions to consider, along with some key takeaway quotes from the Guide:

- 1. General Compliance Controls:** From the 1998 OIG Compliance Guidance to the updated OIG General Compliance Program Guidance to the Guide, the emphasis remains on the importance of maintaining and developing policies and procedures, conducting annual and as-needed trainings, keeping up to date on new developments, and taking a practical approach remains key.
Key Takeaway Quote: “...education providers and manufacturers must remember the cardinal tenet that social media posts, regardless of their purpose, must be 'truthful and not misleading.'”
- 2. Know Your Audience:** How many times have you asked or been asked – who is the intended audience? This is an area that the Guide also touches on for educators and manufacturers. When developing content this is often what a company should focus on. The Guide mentions the importance of considering not only the audience but the platform as well.
Key Takeaway Quote: As it relates to the platform and audience, “This consideration includes both intended and unintended recipients.”
- 3. Privacy:** Privacy is a hot topic right now both from a state and federal perspective. Questions may include: what information are you collecting, who will it be shared with, who are you targeting, and will users understand how their information is being used? The Guide also addresses collected data, consent, security of the collected data, and data

breaches.

Key Takeaway Quote: "... given the sensitive nature of collected personal data, especially those related to healthcare, education providers and manufacturers should carefully evaluate the platform's privacy policies and practices..."

4. **Content Creation:** We have seen FDA and FTC guidance speak to the importance of understanding "who" is controlling or responsible for content posted – whether it is on behalf of a company or an individual. Although the Guide is meant to focus on continuing education which would not include promotional activity, it does indicate that considerations of content should also include a review of requirements related to product promotion (e.g., FDA regulation of advertising and promotion), independence of medical education, prohibitions against kickbacks, and false claims.

Key Takeaway Quote: "... manufacturers are responsible for the content of their posts and those of their agents... This responsibility extends to content that is re-shared."

5. **Standards for Social Media Content and Review:** Many companies have policies/procedures that govern the use of social media, but the basic requirement should be the creation of a committee, individual, or department to review content. This review not only includes the actual content but also who is posting, as it will potentially be viewed as being posted on behalf of the company.

Key Takeaway Quote: "While having personal social media accounts and making personal posts are not inappropriate, posters must exercise care to ensure that personal posts are not confused with or attributed as statements by the organization."

6. **Transparency and Disclaimers:** Recently, guidance has been issued by different enforcement agencies including FDA and FTC, regarding the use of appropriate disclaimers and the importance of clearly articulating who is sponsoring the social media communication. The Coalition also focuses on manufacturers (from a healthcare continuing education perspective) being "transparent" about their involvement in any communications, activities, or materials disseminated using social media.

Key Takeaway Quotes: "Disclaimers highlight important limitations or caveats involving the information provided to ensure that the material is not misleading... The foundation of trust is transparency."

7. **Directing Readers to Unaffiliated Content (Re-sharing, Links, Tags, Hashtags & Signposts):** In addition to reviewing social media content, the Guide also reminds us that it is important to consider any additional links, tags, hashtags, etc. that may be included within such content. Links may direct a reader to content that is not necessarily appropriate for the post or the company. Similarly, hashtags may be misleading or misunderstood because they present a truncated version of the message. Reviewing links and hashtags are equally important to reviewing the full sentence or post.

Key Takeaway Quote: "Regardless of the mechanism, education providers and manufacturers must exercise caution... Even if there is no express endorsement of the unaffiliated content in the original post, connecting such content makes it part of the original post."

8. **Social Media Influencers:** Recently both FDA and FTC have been focusing on the use of endorsements and influencers on behalf of industry and other business areas. The Guide speaks to many of the same principles including honesty, transparency, type of endorser, and responsibility. Since influencers are an extension of the company they represent, the Guide recommends they follow the same principles and guidelines applicable to an actual employee and address their role with the same type of rigor.

Key Takeaway Quote: "Depending on the expected role of the influencer, education providers and manufacturers should evaluate an influencer's qualifications (i.e., vet them) to ensure they are 'fit for purpose.'"

Although this article does not include everything covered within the Guide or all the areas to consider regarding social media, it does give a snapshot of some of the more pertinent topics. We recommend reading the entire Guide for additional information. Social media will continue to grow with additional platforms, rules, and restrictions. In order to help

maintain a company's compliance efforts regarding social media, consider the importance of proper controls, review processes, policies/procedures, training, and overall commitment to moving the business forward in a compliant way.