

Blog Post

Physicians: Beware of FTC Rules for Product Endorsements

January 25, 2021

It has become increasingly common for physicians and other healthcare professionals to share medical information with the public via video platforms, blogs, and social media sites. That can be a great public service, especially during the pandemic, but when public communications include a positive review or other favorable mention of medical products or services, such statements can unwittingly come within the purview of the Federal Trade Commission (FTC).

Speaking favorably about a specific medical product or service is an endorsement – even if done outside of the context of a traditional advertisement. If a provider does so while also having a financial interest in the product or service, the FTC wants consumers to know.

Aside from professional ethical considerations, FTC regulations require certain disclosures when an expert such as a physician endorses a product/service with which he or she has a material relationship. Here are a few guidelines to consider before speaking to the public about a specific medical product or service:

1. **Disclose material connections.** If you were to tout a medical product or service within a traditional advertisement, reasonable viewers expect you would receive compensation for such an

Related Work

Healthcare
Pharmacy, Drugs, and
Medical Devices
Physician Transactions
and Health Ventures

Related Offices

Tallahassee

Health Law Rx

Akerman Perspectives
on the Latest
Developments in
Healthcare Law

[Visit this Akerman blog](#)

appearance. However, in the FTC's view, the public regards blogs, videos, and social media posts with less skepticism than traditional advertising. As a result, if you have any "material connection" to the product or service you are promoting, the FTC requires that you clearly disclose the existence of such relationship within the blog, video, or social media post. 16 CFR § 255.5. Disclosure can be as simple as, "I work as a consultant for Gut Health Supplement Corporation" or "Recipient of grants from the drug maker."

2. **Know "material connections" are construed broadly.** What counts as material connections? Certainly owning part of the company that sells the product or service is a material connection. Otherwise receiving a cut of the sales is, too. Same goes for any endorsement contract, spokesperson agreement, consulting arrangement, grant funding, or speaking fee you might receive. Is your sister the CEO? Is the product or service sold by your employer? Disclose the existence of any such affiliation in every post in which you endorse the product or service.
3. **Avoid misstatements.** It goes without saying, but be truthful and accurate when making statements about your experience with a medical product or service or promoting its benefits. If you make a comparison, such as describing a product as the best brand on the market, ensure you have experience with similar products against which to compare the selected product. If you describe a certain benefit of the product, you should have used, evaluated, or tested the product sufficiently to conclude the benefit indeed exists or otherwise consulted trustworthy sources that conclude as such. 16 CFR § 255.3(b).
4. **Be proactive.** If you are providing a paid endorsement for the company that sells the product or service, approve all endorsement language that the company wants to attribute to you. Ensure disclosures are made as needed, and mandate that advertisements and other

promotional materials may not take your endorsement out of context.

In light of the continued reliance on virtual and social media to communicate healthcare information during the pandemic, providers who endorse a product or service, even indirectly, should pay special attention to these FTC guidelines.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.