



CORPORATE COMMUNICATOR

Spring 2012

**Social Media Practices and Policies for the Pharmaceutical Industry**

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The Food and Drug Administration's much anticipated draft guidance related to the use of social media by pharmaceutical companies fell far short of what the industry expected. More than two years after the FDA held initial hearings on the topic, it quietly released social-media guidelines that addressed only one particular issue: communications relative to off-label uses of their products. But, there is more guidance to come. The FDA indicated upon release of this limited guidance that it expects to release multiple draft guidances relative to social media and other issues, including fulfilling regulatory requirements when there are space limitations (i.e., the 140-character limit of Twitter) and correcting misinformation.

While the guidance itself is important and marks the first time that social media channels such as Twitter and YouTube have been mentioned by name in FDA guidance, its narrow focus provides little in the way of direction to an industry yearning for clarity relative to online marketing issues generally. Despite its narrow focus, there is a silver lining. The pharmaceutical industry can take comfort in the fact that the guidance does not appear to suggest that the industry stop using social media for marketing purposes.

The pharmaceutical industry has been understandably disappointed by the

pace of progress relative to guidance on the use of social media. Big Pharma spent \$1 billion in online promotions last year and is expected to reach \$1.5 billion in spending by 2014; however, we believe this represents a fraction of the spending that might be expected if clearer guidelines were established. Rather than wait for definitive guidance from the FDA that many predict will never come,<sup>[1]</sup> a host of industry players are making attempts at developing consensus on a way forward. In February 2012, the Digital Health Coalition introduced its Social Media Guiding Principles and Best Practices for Companies and Users, which represents a consensus of the industry's top digital marketers on issues relating to social media and online communications. Though the document was conceived as an exercise in industry self regulation, the group hopes it will inform FDA thinking on the topic.

Regardless of the ambiguous state of the law, the use of social media continues to grow as a major form of communication between FDA-regulated companies and their customers. Companies must interpret the FDA's guidance and use it as a means of understanding the FDA's thinking on the subject of social media. Below is some information on how participants in the industry are using social media despite the lack of guidance, followed by some suggestions for implementing an effective social media strategy at a pharmaceutical company.

### **Industry Practice**

Big Pharma's use of social media is expanding but companies still need to be cautious. Big Pharma currently utilizes many types of social media platforms to discuss public policy, corporate responsibility and to generally promote their brand and products to the public. For example, companies like Sanofi and Pfizer have used websites and online videos to engage in educational campaigns in connection with the need for various products. It is estimated, however, that the vast majority of companies in the pharmaceutical industry do not participate in social media. For these companies, there may be a larger burden associated with remaining compliant with applicable regulations in the fast-pace world of social media. New tools are developed on a rapid basis, which requires companies to improvise and to consistently review and/or modify their social media strategies. For example, when Facebook Inc. began allowing customers to post messages on companies' pages, companies such as Johnson & Johnson and AstraZeneca deleted some of their pages and temporarily removed others due to the uncertainty created by the situation.

### **Social Media Practices and Policies: Some Suggestions**

Being part of a heavily regulated and competitive industry can result in a cultural environment that does not easily lend itself to safely making the kind of instant unfiltered communications often seen in social media channels. To combat the associated risks, companies today must work closely with both their legal and marketing teams to maintain an up-to-date social media policy and to ensure its compliance with its terms.

As FDA-regulated companies continue to expand their use of social media, the need for diligent monitoring of the company's and employees' communications is more important than ever. Large numbers of employees engaging the public (on their own behalf or the company's) amplifies the potential for violating applicable laws or a company's internal policies. It has been predicted that in 2013 and beyond, all industries are likely to encounter a new generation of privacy, employment, defamation and other legal claims arising out of these social media platforms. Proper and consistent training will allow employees to safely use social media while still growing a customer base and business.

Below are some basic tips to help a company maintain a healthy social media existence in the pharmaceutical industry.

### 1. **Maintain a Written Social Media Policy**

- **Basic Terms.** The purpose of the social media policy is to guide the company and employees' use of social media. A well-drafted social media policy will discuss the basic guidelines regarding permissible and prohibited conduct, best practices and the level of privacy employees should expect when using either company or personal equipment.
- **A Social Media Policy Should Establish Processes and Procedures.** A social media policy should include processes and procedures to ensure that social media communications are properly vetted by the appropriate departments. Having a clear workflow will allow the company to properly create, monitor and censor communications before they are sent, including posting any disclaimers or declaring the company's sponsorship of a website or product. This "workflow" also will help to prevent communications that are distributed through an incorrect medium. For example, while promoting a drug through a social media site, companies should ensure that promotion is restricted to the physicians who have agreed to receive

promotional content and does not reach the public.

- **A Social Media Policy Should be Transparent.**
  - **Employees.** Employees should be aware that all communications on company-owned equipment can be subject to review by the company. The company's social media policy (in conjunction with other policies) should establish realistic privacy expectations for employees, referencing the fact that each employee's right to free speech is not unlimited, and that they are prohibited from disclosing the company's confidential or proprietary information and they are prohibited from disclosing off-label information to the public at large. If your company monitors its websites and social media accounts (Facebook, blogs, etc.) for unapproved, harmful, deceptive or illegal comments, have disciplinary actions in place and be diligent to enforce them.
  - **Customers and Business Partners.** Every comment or response to the company's communications may affect its reputation or relationships with other parties, not to mention violate applicable regulations (think: doctors posting recommendations on how to use products to the public). Although the current thought is that companies are not responsible for the comments of others, this issue can be further mitigated by making it known to the public what types of communications will not be tolerated.
- **Every Employee Should Sign an Acknowledgement.** Each employee should sign an acknowledgment stating he or she has read the company's social media policy and agrees to abide by its terms and conditions.

## 2. Train All Employees

- **Training is Crucial.** Companies can substantially mitigate their exposure by training all employees about its current policies and the "dos and don'ts" related to social media. According to a recent study, almost 15 percent of employees have made a status update or tweeted about their work; 31 percent of employers surveyed reported having taken disciplinary action

against employees for the information they communicated about the company.

- **Employees are Responsible for Their Own Messages.** Well trained employees should understand who is responsible for creating, editing and reviewing communications before they are published to one of the company's social media accounts. Employees should be on notice that any comments related to the company or its products must be accompanied by a statement verifying they are an employee of the company, along with an appropriate disclaimer.<sup>[2]</sup>

### 3. Keep Organized

- Given the regulatory controls placed on companies in the pharmaceutical industry, the threat of an audit by the FDA or another governmental agency is real. Companies should prepare for this reality by using technology that automatically archives all communications in a way that makes them easily accessible in the event of an audit.

### 4. Other Important Tips

- Security measures always should be taken to protect confidential information.
- If social media communications include a disclaimer, remember that per FDA guidance, the public should be able to access all related information easily with only "one click."

We expect the FDA to provide additional guidance in the future related to social media. In the meantime, FDA-regulated companies should be careful with their approach and apply existing laws to social media communications just as one would to other forms of media governing the industry. Above all, remember that social media can be an incredible asset to a company's objectives when used responsibly.

#### Notes:

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<sup>[1]</sup> Note that while the FDA has not provided guidance related to social media, other government agencies such as the U.S. Federal Trade Commission, the National Labor Relations Board and the Securities and Exchange Commission have provided

guidance that may be applicable to a company's social media communications. [\[back\]](#)

<sup>[2]</sup> For example, "the views expressed herein are mine alone and do not necessarily reflect the views of [my company]." [\[back\]](#)

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