



# LOCKWOOD LAW FIRM

## ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

To: Michael Jackson, Executive Vice President and CEO  
Florida Pharmacy Association

From: T.J. Morton

Re: Social Media Policy

Date: 1/10/2019

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This memo provides a review of the Florida Pharmacy Association's (the "FPA's") Social Media and Website Posting/Access Policy and Procedure (the "Policy") and includes recommended modifications to the Policy. A copy of the Policy is attached.

The Policy authorizes members of the Governmental Affairs Committee ("GAC") and Public Affairs Council ("PAC") to have direct access to the FPA's social media and website platforms. There are two rationales behind the Policy. First, the Policy notes that providing members with social media and website access will allow the Executive Vice President ("EVP") to focus on higher level responsibilities. Second, the Policy states that the access will allow GAC and PAC members to be engaged, informed, and educated on where to navigate the website in various platforms relevant to their needs.

The Policy establishes a proposed process for vetting content that includes the following components, among others:

1. Pharmacists on the GAC and PAC must provide approval for respective content based on the legislative agenda, strategic plan and governance documents.
2. At least three pharmacists from the GAC or PAC, as appropriate, must provide written consent that the website or social media content is appropriate and aligned with the FPA's legislative agenda, strategic plan, and governance documents, prior to posting the content.
3. If the content is newly developed, either the EVP or the President's Committee may provide approval. If the content has been developed by reputable, evidence-based sources, approval by the EVP or President's Committee is not required. If the content is newly developed or may be perceived as controversial, the Chair of the GAC or PAC, as appropriate, will present to the EVP or President's Committee for approval.
4. If the content is perceived as controversial with detriment to the Association, the EVP would communicate immediately to the responsible group and President's Committee, and the content will be removed.



There are several aspects of the Policy that are ambiguous and could use some clarification. First, it is unclear whether the Policy requires one or two levels of approval. The Policy indicates that content must be approved by at least three pharmacists from the GAC or PAC, as appropriate, before it can be posted. The Policy then states that if the content is newly developed, it may be approved by either the EVP or the President's Committee, unless the new content has been developed by reputable, evidence based-sources. In that case, approval by the EVP or the President's Committee is not necessary. The use of the word "may" suggests that the approval of the EVP or President's Committee is not mandatory; however, the next sentence indicates that the approval of the EVP or President's Committee "is not necessary" if the content is from certain approved sources. By stating that approval "is not necessary" in those circumstances, the Policy suggests that it is necessary in all other circumstances. That conflicts with the use of the word "may" which is permissive. This should be clarified.

Second, it is unclear whether the EVP or the President's Committee should provide the approval. This could become an issue if there is a disagreement between the EVP and President's Committee as to whether to approve certain content. The Policy does not provide a process for resolving that conflict. It is recommended that the Policy be amended to either remove the EVP or President's Committee from the approval process or require approval of both the EVP and President's Committee.

Third, it is unclear what is considered "newly developed content". Would a social media post stating nothing more than the date, time and location of an upcoming event be considered "newly developed content"? If so, then the content could not be posted until approved by three members of GAC or PAC, and possibly the EVP or the President's Committee. Requiring a committee meeting and potentially a second level of approval for posts that do not reflect the FPA's position and simply provide notice of an upcoming event is burdensome, unnecessary, and will result in delays in posting the information. It is recommended that the Policy include a separate process for approval of notification posts.

Next, the process for removing material perceived as controversial is unclear. According to the Policy, if posted content is perceived as controversial with detriment to the FPA, the EVP is to communicate with the GAC or PAC, as appropriate, and the President's Committee. The Policy then states that the content may be removed. It is unclear whether the EVP, GAC/PAC, or President's Committee has the authority to make the final decision as to whether to remove the content. This should be clarified to avoid any disputes.

Further on this issue, content that may be perceived as controversial can only be posted after approval by the EVP or President's Committee. If the EVP or President's Committee approved the content prior to posting, it is unlikely that the person or body who approved the content as appropriate for posting would find the content to be detrimental to the association. Thus, it is recommended that the person or body who has final authority for removing controversial content be different from the person or body who approved the content as appropriate for posting.

Finally, and most importantly, Article V, Section 2 of the FPA Constitution states that no FPA member may speak on behalf of the FPA without the approval of the Board of Directors ("Board"). The Policy authorizes all members of the GAC and PAC to post content on the FPA's social media platforms and website. By doing so, the members are purporting to speak on behalf of the FPA. This can only be done

if approved by the Board. Thus, the Board must approve the Policy before it can be implemented. If the Board approves the Policy as currently written, the Board is providing each member of the GAC and PAC with blanket approval to post content on behalf of the FPA in accordance with the Policy.

Generally, it is best to limit the number of individuals who have access and authority to post on an association's social media and website platforms to the smallest number of people needed to effectively accomplish the association's goals. Even when individuals have the best of intentions, there can be mistakes and misstatements that can be detrimental to an association.

The Policy provides a large number of members with access to the FPA's platforms. It is not entirely clear that this is necessary to achieve the goals of the Policy. For example, the goals of the Policy can be achieved by authorizing the GAC and PAC to create and approve content that can be provided to the FPA's office for posting by the EVP or designated FPA staff member(s). This will allow the GAC and PAC members to be engaged with respect to the FPA's platforms and will allow the EVP to focus on higher level responsibilities while limiting the number of people who have access to the accounts. This will reduce the likelihood of a posting that could be detrimental to the FPA. Further, Directors and Officers liability insurance does not cover actions by a member who is not a director or officer of the association. If a non-director/officer posted content that resulted in a liability, the individual who posted the information could be personally liable. For these reasons, the best practice is to limit access to the social media accounts and internet platforms to FPA staff and one or two members in leadership.