Labeling Compliance – Advertising & Promotion of Medical Devices – Regulatory Considerations

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Topics

- CDRH jurisdiction
- Background guidances
- Surveillance and Enforcement
- Labeling - promotional violation examples

CDRH JURISDICTION

Division of Premarket and Labeling Compliance (DPLC)

- DPLC is the Division within the Office of Compliance (OC) that:
  - Enforces **premarket clearance and approval** requirements
  - Enforces **labeling and promotion and advertising** requirements for medical devices

Background Guidances

Final General Wellness Guidance

- Final Guidance - General Wellness: Policy for Low Risk Devices
  - Provides clarity on CDRH's compliance policy for low risk products that:
    - Only **promote a healthy lifestyle** (general wellness products)
    - Promote a **well-known association between a healthy lifestyle and a certain disease or condition**
  - Changes from the draft guidance include:
    - Clarifying that CDRH's general wellness policy **does not apply to devices that present risks to users' or other persons' safety**
    - Identifying where the FDA will continue to focus its oversight

Final General Wellness Guidance

CDRH does not intend to examine low risk general wellness products to determine whether they are devices within the meaning of the FD&C Act or, if they are devices, whether they comply with the premarket review **and** post-market regulatory requirements for devices including, but not limited to:

- Registration and listing and premarket notification requirements (21 CFR Part 807)
- Labeling requirements (21 CFR Part 801 and 21 CFR 809.10)
- Good manufacturing practice requirements as set forth in the Quality System regulations (21 CFR Part 820)
- Medical Device Reporting (MDR) requirements (21 CFR Part 803)

Final General Wellness Guidance

- General wellness products
  - Intended for only general wellness use and present a low risk to safety of users and other persons
- General wellness (intended) use
  - Maintaining or encouraging a general state of health or healthy activity or (**does not make any reference to diseases or conditions**)
  - Relates to the role of healthy lifestyle with helping to reduce the impact of certain chronic diseases or conditions and where it is well understood and accepted that healthy lifestyle choices may play an important role (**makes reference to diseases or conditions**)
    - Two subcategories – **Promote, track, and/or encourage choice(s)**, which as part of healthy lifestyle:
      - **may help to reduce the risk** of certain chronic diseases or conditions
      - **may help living well** with certain chronic diseases or conditions

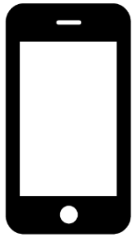
Final General Wellness Guidance

- Low risk product
  - Is **not invasive or implanted**
  - **Does not involve an intervention or technology that may pose a risk to the safety of users** and other persons if specific regulatory controls are not applied (e.g., risks from lasers or radiation exposure)

- Low risk general wellness product (criteria)
  - Presents general wellness claim (only)
  - Low risk product

Final General Wellness Guidance

- Example: Mobile application that plays music to “soothe and relax” an individual to “manage stress”
  - Claim: Relates only to relaxation or stress management, not to any disease or medical condition
  - Product Risk: Technology (i.e., playing music) does not pose a risk to the safety of users and other persons if specific regulatory controls are not applied



Final Patient Preference Guidance

- Final Guidance: Patient Preference Information – Voluntary Submission, Review in Premarket Approval Applications, Humanitarian Device Exemption Applications, and *De Novo* Requests, and Inclusion in Decision Summaries and Device Labeling

  - Encourages submission of **patient preference information (PPI)**
  - Recommends qualities of **patient preference studies**, which may result in valid scientific evidence
  - Provides recommendations for collecting and submitting (PPI) to FDA
  - Discusses FDA's inclusion of PPI in its decision summaries and **provide recommendations for its inclusion in device labeling**

Final Patient Preference Guidance

- Highlights include:
  - A **differentiation of patient preference information from patient-reported outcomes**
  - Explanation that PPI reviewed by FDA and supports FDA's approval or marketing authorization **should also be described in the device labeling**
  - Discussion that patient labeling should use terminology and numerical **data that is easily recognized by the average layperson**
  - Explanation that when possible, the **likelihoods of risks and benefits should be expressed in absolute terms** rather than relative terms

Final Benefit-Risk Guidance

- Draft Guidance: Factors to Consider Regarding Benefit-Risk in Medical Device Product Availability, Compliance, and Enforcement Decisions
  - May help **companies conduct their own benefit-risk assessments**
  - Clarifies **how the CDRH assesses the benefits and risks** when making product availability, compliance, and enforcement decisions
  - Explains that CDRH may consider relevant, reliable information relating to **patient perspective(s) and real-world data**, in addition to traditional scientific and clinical data

Final Benefit-Risk Guidance

Benefit Factors

- Type of benefit(s)
- Magnitude of benefit(s)
- Likelihood of patient experiencing one or more benefits
- Duration of effects
- Patient preference on benefit
- Benefit factors for HCPs or caregivers
- Medical necessity

Risk Factors

- Risk severity
- Likelihood of risk
- Nonconforming product risks
- Duration of exposure to population
- False-positive or false-negative results
- Patient tolerance of risk
- Risk factors for HCPs or caregivers

Final Benefit-Risk Guidance

Additional Benefit-Risk Factors to Consider When Making Product Availability, Compliance, and Enforcement Decisions

- Uncertainty
- Mitigations
- Detectability
- Failure mode
- Scope of the device
- Patient Impact
- Preference for availability
- Nature of violations/nonconforming product
- Firm compliance history

General Labeling Guidance Documents

https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/DeviceLabeling/default.htm

- Labeling - Regulatory Requirements for Medical Devices (FDA 89-4203) (PDF - 3MB)
- Write It Right (PDF - 2.4MB)
- Device Labeling Guidance #G91-1 (blue book memo) (Text Only)
- Guidance on Medical Device Patient Labeling - Final Guidance for Industry and FDA Staff (PDF - 333KB)
- Human Factors Principles for Medical Device Labeling (PDF - 1.3MB)
- Section 206 of the Medical Device User Fee and Modernization Act (MDUFMA) (New section 502(f) of the Federal Food, Drug, and Cosmetic Act) Electronic Labeling for Prescription Devices Intended for Use in Health Care Facilities - #G03-1
- November 2004 Medical Devices Technical Corrections Act (MDTCA) Expanded Authority for Electronic Labeling (PDF - 268KB)
- Alternative to Certain Prescription Device Labeling Requirements: Guidance for Industry (PDF - 22KB)

SURVEILLANCE AND ENFORCEMENT

Surveillance and Enforcement

Compliance action approach

- Focused on the **impact on patients**
- Risk-based on **significant violations**
  - Premarket clearance and approval
    - **No PMA or 510(k)**
    - **Modification of a 510(k) cleared device** or a 510(k) exempt device
  - Labeling, advertising and promotion
    - Restricted medical devices
    - **False or misleading statements**

Surveillance and Enforcement

Surveillance tools:

- **Inspections**
- **Promotional materials** disseminated to the public
  - The **internet** is a helpful resource for DPLC
    - No requirement for submission at the time of initial dissemination or publication for medical devices
- **Outreach** Initiatives
  - Supporting the Center's Strategic Plan
  - Partnering with Patients (future)

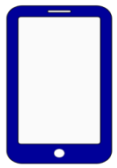
Surveillance and Enforcement

Surveillance tools:

- Allegations of **Regulatory Misconduct**
  - A claim that a medical device manufacturer or individuals marketing medical devices may be doing so in a manner that **violates the law**
  - Can help identify the **potential risks to the patient**
  - Helps to determine **whether further investigation is warranted**, as well as any steps needed to address or correct a potential violation
  - Anyone can report an allegation

Surveillance and Enforcement

Ways to Report an Allegation of Regulatory Misconduct

Regular Mail	Email	Phone	Online Form
			
	OCMedicalDeviceCo@fda.hhs.gov	240-402-7675	https://www.fda.gov/MedicalDevices/Safety/ReportingAllegationsofRegulatoryMisconduct/ucm526129.htm

Attention: Office of Compliance
Center for Devices and Radiological Health
Food and Drug Administration
WO Bldg. 66 RM 3523
10903 New Hampshire Ave
Silver Spring, MD 20993

Common Problems

- Third Party Sellers
- Claims for products intended to remedy the **latest outbreak or natural disaster**
- **Breaking commitments** made during the premarket review process
- **Exceeding boundaries** of enforcement discretion
- **Misuse of exempt** product classifications

Regulatory Action Example

Warning Letter – ADHD System

- **Cleared** to aid physicians by providing objective measurements of hyperactivity, impulsivity and inattention…
- **Promoted** for:
  - Determine the effectiveness of a new treatment and achieve clinical efficacy sooner
  - Optimize treatment in weeks instead of months
  - Follow-up tests help to assess whether the patient is getting the right intervention
  - Objectively measure micro-motion and analyze shifts in attention state

Surgical Mesh

- **Cleared** use (general): **For reinforcing** soft tissue or bone where weakness exists
- Each of the three products were being **promoted** specifically for use in surgery of the breast including mastopexy with or without augmentation, reconstruction and revision.
- One of the products included the use of abdominal, inguinal, femoral diaphragmatic, scrotal and umbilical hernia **repairs**.

Colon Hydrotherapy

- **Promoted** to see improvements in the following:
  - Removal of ‘autotoxins’
  - Psoriasis
  - Lupus
  - Multiple sclerosis
  - Chronic intestinal psueduobstruction
  - Congenital dysautonomia
  - Ovarian cancer
  - Parasitic infections

Biofeedback Device

- The device was being **marketed to treat or cure**:
  - Multiple sclerosis
  - Breast cancer
  - Blindness
  - Lyme disease
  - Osteoporosis
  - …and smoking cessation

Dermal Fillers

- Dermal fillers are **Class III – PMA** injectable "implants"
- The **approved** uses are for use in the face e.g., nasolabial folds, cheek and lip augmentation (20+ approved products)
- **Unapproved** uses include:
  - Breast augmentation
  - Increase the size/shape of the buttocks

Dermal Fillers (cont'd)

- The **unapproved** polyacrylamide hydrogel was being **marketed** for use in the face, lips and buttocks to increase their size and for breast, genital and whole body shaping.
- The combination product was **marketed** for shaping the face, genitals, mammary glands and buttocks and for use as an endoprosthetic for vocal chords in cases of paralytic stenosis of the larynx…as well as a number of other indications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