

Do Health & Wellness Online Authors Risk Lawsuits?

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By Michael H. Cohen

If you're someone who is publishing a book or e-book on health and wellness and you're looking at a lot of media opportunities, and you're concerned about your potential liability, then this video is for you.

I'm Michael H. Cohen, founding attorney of the Cohen Healthcare Law Group. We help healthcare industry clients navigate healthcare and FDA legal issues and launch or successfully continue to grow their health and wellness product or service.

Today, I'm going to explain some of the key legal mis-steps that authors make when they put content out into the marketplace on health and wellness. By author, I mean someone who puts out content. You could be writing a book or e-book, PDF, broadcasting a podcast or hosting a YouTube channel, appearing on someone else's website, blog or video series; or you could be a hologram emanating from the skull of Princess Leah- Virtual reality, whatever the technology brings.

Whatever the format, here's the deal: you're the creator. You've gone on the hero's journey. Maybe it was your health you saved, maybe the health and wellness of a loved one. You used a certain therapy, a certain method of healing, you followed some protocol, or you discovered or designed your own magical blend. Remember the movie, *Lorenzo's Oil*? It came out a long time ago. But worth watching Susan Sarandon battle the doctors and motivate an industry to research and validate a therapy she pioneered to save her son.

So, maybe that's your story, and it's the story of a lot of our clients and maybe you put this information out to the public. Can you do it without incurring too much legal exposure? What can you do to manage your liability risk?

At first, this seems like a fairly simple question. Don't engage in unlicensed practice of medicine.

But, the question is how you will put it all together? That is the question.

Are you embarking on a purely educational venture, or are you giving specific advice to individuals about their health and journey back to health?

In the old days, a book was this physical thing you received in the mail. There was a lot of distance between the author and the reader. The point of the book was to draw you into the page, so you could forget that someone else had spent a lot of time in another space putting it together. These days, technology narrows the gap. You can be right there doing a Zoom call, or some other platform virtually alongside your client or customer.

So, going back to my question, how are you going to put it all together without incurring undue liability?

Consider these three points to help manage legal risk.

First, in the eyes of the law, there is a difference between a purely educational venture, on one hand, and, clinical services on the other. The difference is super obvious if you think about a book on one hand, and a doctor's visit on the other. Where the boundaries get blurred is where you use an online platform to access the customer. For example, if I text my therapist, clearly that is a clinical encounter. If I attend her webinar and raise my hand in the Chat box and ask about whether glucosamine is good in general for joint health, that is usually going to be considered education. But again, it depends on the facts and circumstances.

Second, disclaimers are useful. You are not providing medical advice, you are not diagnosing and so on. But, disclaimers don't tell the whole story. You need to make sure that what you are doing, is congruent with the disclaimers. You can't put in a disclaimer saying, "this is not medical advice" and then give medical advice. For example, reviewing someone's lab test would be considered clinical advice.

Third, there is a lot of other legal language you can put in that could be protective. For example, a clause limiting your liability in case your general educational content doesn't solve the customer's health problem – General Liability Disclaimer.

Beyond these three key points, there are a lot of nuances. For instance, do you take a medical history? In the eyes of prosecutors looking for unlicensed practice of medicine, the intake form itself could be a red flag, it could be evidence.

And, different people have different risk profiles. Some want to take a lot of risk, some of our clients want to take little bit or risk, some are like goldilocks – it's got to be just right. If you have a health and wellness startup, let's say a telehealth or telemedicine app that connects patients to medical doctors or therapists digitally, you're likely to have a different risk profile than, say, a lone MD who wants to style themselves a health coach.

One thing that I enjoy about our practice at Cohen Healthcare Law Group is that we're not only familiar with the legal essentials, we're also very experienced at the nuances, and we've been at this since 1999. We understand the variations when it comes to these fines lines (and wrinkles) between putting out educational content as commercial free speech, and engaging in the kinds of professional encounters that do require a healthcare license.

Thank you so much for watching. If you still have questions, click on the link below, cohenhealthcarelaw.com/contact, to send us a message or book an appointment. Here's to the success of your healthcare venture, we look forward to speaking with you soon.

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