

The FTC Takes a ShOt at Telehealth Program for Allegedly Deceptive Pricing, Consumer Reviews, and Weight Loss Claims

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In an enforcement action akin to an advertising law issue spotting exam, the FTC [announced](#) this week a settlement with a telemedicine company and its principals for allegedly using misleading pricing claims that failed to disclose fees and a program term commitment, deceptive reviews and testimonials, and unsubstantiated weight loss claims. The consent order requires the company and its principals to pay \$150,000 in monetary relief and imposes a host of injunctive relief. Notably, this is the first action under FTC Chair Ferguson with a complaint count on health or weight loss claims, and the consent order returns to a less prescriptive and more flexible substantiation requirement.

The FTC alleges that as of early 2022, Southern Health Solutions, Inc., d/b/a Next Medical and NextMed, its founder, Robert Epstein, and CEO, Frank Leonardo III, sold telehealth weight-loss membership programs that allowed consumers access to medical providers who could prescribe GLP-1 drugs, but not much else. Notable allegations in the [complaint](#) include:

- **Deceptive Pricing Claims.** Defendants promoted the membership as a way to access Wegovy, Ozempic, and other GLP-1 drugs with a monthly fee (e.g., “only \$79 for your first month” or “only \$99 and a prescription as soon as tomorrow”) without disclosing that the membership fee did not include the cost of the medication, laboratory testing, and medical appointments that were generally required to obtain the prescriptions. The advertising also failed to disclose that a one-year membership term was required, and consumers would be charged an early termination fee for canceling the membership. The FTC alleges that defendants violated the Electronic Fund Transfer Act (EFTA) and Regulation E by debiting consumers’ bank accounts on a recurring basis without written authorization based on defendants’ failure to disclose total cost.
- **Failure to Timely Process Cancellation and Refund Requests.** While requiring a one-year membership agreement, NextMed ultimately did allow consumers to cancel according to the complaint. However, the FTC alleged that the company failed to maintain sufficient personnel or technological capacity to handle customer cancellation and refund requests and therefore did not timely process consumers’ requests to cancel their membership agreements or obtain refunds. The complaint notes that the BBB contacted the company in late 2022 to discuss a “marked increase in complaints” and alleges that NextMed knew that consumers wanted to cancel because GLP-1 medications were not included in the monthly cost, but that the company

still made it difficult to cancel.

- **Unsubstantiated Weight Loss Claims.** The FTC alleges that the company made unsubstantiated weight loss claims that its users, on average, lost 53 pounds and 23% of their body weight, notwithstanding that the company did not maintain records regarding weight loss of its members and did not otherwise track or substantiate such weight loss claims. Because NextMed did not have knowledge of the starting weight of its members, which drugs they were prescribed, or how long members took such drugs, the company could not have a reasonable basis to substantiate its weight loss claims.
- **Deceptive Reviews and Testimonials.** Finally, the complaint alleges that the company used deceptive before and after photos of non-members who had not used GLP-1 drugs, posted fake testimonials drafted by individuals, employees, and family members who did not use NextMed's services, and suppressed negative reviews, including by flagging, or disputing negative consumer reviews without any reasonable basis and by offering Amazon gift cards to consumers who agreed to change or remove negative reviews.

In addition to monetary redress, the [proposed consent order](#) provides that NextMed:

- must not misrepresent that the cost of a telehealth service includes the cost of consultations, appointments, lab work, drugs, supplements, or other treatments;
- support its weight loss claims with competent and reliable evidence substantiating the average or typical results consumers will achieve;
- must not misrepresent that reviews are truthful or from real consumers;
- disclose any unexpected material connection with endorsers or reviewers;
- must not manipulate reviews, including that it must not selectively solicit reviews, incentivize consumers to remove or edit negative reviews, and report or dispute negative reviews without a reasonable basis;
- obtain consumer's informed consent before billing consumers; and
- clearly disclose cancellation terms and terms related to refunds before consumers are asked to pay, provide consumers a simple way to request cancellations or refunds, and to promptly honor any cancellation or refund requests that comply with policies applicable at the time of purchase.

The case underscores that the FTC will continue to bring enforcement actions to address traditional notions of deception and unfairness under the FTC Act, even if it is less aggressive in pursuing novel uses of longstanding authority as it did in the Khan administration.

One potential silver lining for industry: While the proposed consent order requires the company to have "competent and reliable evidence" to substantiate weight loss claims, the order returns to a more flexible definition of competent and reliable evidence that does not prescribe any particular type of test and instead requires "tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that (1) have been conducted and evaluated in an objective manner by qualified persons and (2) are generally accepted in the profession to yield accurate and reliable results." Followers of this blog will recall that the previous administration announced a [sweeping overhaul of longstanding FTC guidance on health claims](#) that attempted to

ossify the formerly flexible substantiation standard.