October 6, 2023

Graham McMahon, MD, MMSc
President and Chief Executive Officer
Accreditation Council of Continuing Medical Education
401 North Michigan Avenue
Suite 1850
Chicago, IL 60611

Dear Dr. McMahon:

On behalf of the Continuing Medical Education (CME) Coalition, I am pleased to submit comments in response to the Accreditation Council for Continuing Medical Education's (ACCME) recently issued request for comment on your proposal for designating online and social media platforms for accredited CME delivery. The following comments and opinions were developed by an all-volunteer working group comprised of members of the CME Coalition and is intended to convey the feedback and concerns of our 30+ organizations comprising accredited CME providers, commercial supporters, and learner-oriented stakeholders.

Thank you for this opportunity.

General Comments

First, allow me to begin by applauding the ACCME for its recognition of the growing role of digital technologies, including online platforms and social media companies, in the hosting, dissemination and amplification of medical education. These new (and relatively new) digital means of communicating offer exciting opportunities for creative educators to engage with learners in increasingly compelling formats that have the potential to dramatically expand the reach and impact of CME. At the same time, we recognize that these technologies and tools present new risks in terms of liability for Accredited Providers due to the uneven behavior of social media companies and other actors beyond their control. To address many of these challenges, and to provide guidance for how CME providers should address these challenges while maintaining compliance with accreditation standards and the law, the CME Coalition has been drafting, and plans to soon release to the public, our Social Media Compliance Guide. We look forward to sharing this document with you soon.

As we've spent the last six months working on our Compliance Guide, we have come to believe that current ACCME standards and federal law provide a sufficiently robust framework for answering most

questions that arise related to social media and digitally hosted CME. As a practical matter, while we recognize the unique nature of electronic communications, we believe that the current accreditation standards are quite applicable to online CME, which we believe should be seen essentially as a new type of *venue* for educational activity rather than a new type of activity.

To that end, we agree that the ACCME's expectations related to the educational space should be the same whether the education is in-person or virtual. Clearly, expectations are to be met regardless of educational platform and delivery vehicle.

Given the fact that Accredited Providers are, thus, already required to meet the rigorous standards for educational quality and independence put forth by ACCME's Standards for Integrity and Independence in Accredited Continuing Education, Core Accreditation Criteria, and applicable ACCME policies that govern Accredited Providers, we question whether and why these expectations need to be reiterated via new guidance. We believe the possibility is strong that new, digital-only guidance, could lead to regulatory duplication in some cases and provider confusion in others. Broadly speaking, we are concerned that putting additional or non-specific rules around education delivered via social media platforms might unintentionally cause the perception that this is an unacceptable or non-compliant way to deliver education.

Indeed, by suggesting that there is a need for specific guidance governing online CME, we are concerned that the implication is that established ACCME guidance only applies to traditional live activities. Additionally, how would ACCME's proposed new, highly specific online guidance consider and adapt to the quickly evolving nature of the digital, multimedia, and omnichannel environment? We note, for example the absence of specific mention of guidance pertaining to the use or even existence of artificial intelligence (AI) – perhaps the most transformational technology of recent decades – within the Expectations of Accredited Providers.

Another issue that raises concern for us is how does this guidance impact providers who are accredited under the Joint Accreditation for Interprofessional Continuing Education™? We're sure there are many other examples of confusion that will be raised by the promulgation of new guidance.

Further, we are concerned that the relatively small CME sector will never command the attention of large multinational social media companies, nor wield any real leverage, to drive meaningful changes to social media platforms' terms of use for medical education. We are not confident that the CME community can ever successfully drive the wholesale changes you are seeking from these companies, and that even if we could, these changes would take years to make. But this should not preclude individual providers from making the decision to use these platforms as warranted.

Specific Recommendations

With regard to specific recommendations on your proposed guidance, we suggest that the ACCME modify the portion that reads "It is the accredited providers continuing responsibility to oversee and monitor all use and reuse of multimedia content wherever it is presented" to read as follows, "It is the accredited providers continuing responsibility to monitor all use and reuse of multimedia content wherever it is presented and to take reasonable action to address or remove content when it is reused or repurposed." As you are aware, accredited providers rarely have the ability or legal authority to "oversee" the use and reuse of its posted content. To this end, we recommend include an allowance for

disclaimers on original content developed by providers to insulate them from responsibility of the reuse of content that cannot be tracked and falls outside of the scope of their reasonable monitoring.

With regard to ACCME's proposal dealing with requirements for front matter information (also referred to as accreditation-related information including accreditation statements, presence/absence of relevant financial relationships, evidence that relationships have been mitigated, and, if applicable, the source of commercial support), we believe this proposal to be redundant and unnecessary in that it is already accounted for in other ACCME Standards, Policies and Guidance. Accredited Providers that are found out of compliance with presenting front matter in conjunction with certified content should be appropriately dealt with by the ACCME during its initial accreditation, reaccreditation, and in periods in between as determined by the ACCME on a case-by-case basis. We also believe that the proposed guideline related to the reposting of video material is already sufficiently addressed under "Accountability," more broadly regulated by existing copyright laws and fair use doctrines, and thus is reiterative and should be removed.

We also believe that the terms "platform" and "material authors" need to be clearly defined as part of any new guidance. Additionally, we believe it's important to understand how the new guidance would impact live programming such as the use of slides and/or other CE materials following presentations in a certified activity?

Further, we believe it is important to recognize that when individuals set up accounts/profiles on digital media platforms, each platform will have its own defined terms of service/use and associated privacy policies that are beyond the control of the accredited provider and their educational partners. Relatedly, learners' election of private versus public accounts is out of the control of the accredited provider. We believe that learners who elect to have a "public" account/s and then engage in CME-certified activities hosted on digital media channels should be aware of individual platforms' terms of service and associated privacy policies and thus have a clear understanding that their profile information may be publicly visible and user data managed in accordance with specific platforms' terms of use policies. We are uncertain as to a role here for Accredited Providers or the ACCME, however. It seems akin to the fact that a learner entering an exhibit hall at a medical congress may choose to keep their badge visible or not.
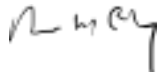
Finally, our current framework is such that accreditation is provided on a per-activity basis irrespective of the venue. Designating a platform as ACCME-compliant is inconsistent with this approach. While we think having a designation for platforms over time may be a good starting point, we are concerned that the existence of an official "ACCME-compliant platform (or platforms)" will raise questions about the legitimacy of otherwise accredited education, developed in accordance with a provider's accreditation policies and procedures, that is hosted on a non-designated platform.

Conclusion and Final Recommendations

In sum, we must all strive to find a balance that both protects Accredited Providers from the unintended consequences of producing online CE while simultaneously encouraging and supporting innovation. While we appreciate the difficulty of your endeavor, we believe that more questions than answers remain regarding ACCME's proposed guidance and that additional research, analysis and clarity is required. In developing new guidance, to the degree it proves necessary, we encourage the ACCME to: 1) perform a survey of the leading technology platforms' terms of use boilerplate in order to analyze the areas of concern and risk for the sake of Accredited Providers, and 2) seek the outside counsel of

established technology, social media, contract, and copyright environment and law experts in a formal working group to develop guidance to meet their stated objectives of protecting ACCME Accredited Providers prior to the implementation of any additional policies or procedures which govern providers' work.

Sincerely,

Andrew Rosenberg, JD, MP

Senior Advisor CME Coalition Washington, DC