Professionalism in Social Media: Guidelines for Healthcare Workers

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What is Social Media?
- Social media is defined as:
  - Websites and applications that enable users to create and share content with or to participants in social networking
  - It is computer mediated tools that allow people to create, share, and exchange information, ideas, and pictures in virtual communities and networks
  - Internet users spend more time on social media than any other type (Nielsen)
  - Social media takes on all different forms; blogs, photo sharing, enterprise social media, social gaming, video sharing, social booking and more
Social Media Websites

- **Facebook** - commonly used for friends to stay in touch
- **Pinterest** - web and mobile application company that has photo sharing website
- **Twitter** - users post “tweets” of up to 140 words that answer “what are you doing right now”
- **You Tube** - can share videos with friends and others
- **MySpace** - commonly used for friends to stay in touch
- **LinkedIn** - commonly used for business networking, job searches, and recruiting
- **Others**: Instagram, Google +, Flickr, Tumblr, FourSquare, Last.fm, Snapfish for photos, LimeWars for video, Napster for music
- Social Media also referred to as Web 2.0

Social Networking Facts

- The Pew Internet Project Research related to social networking showed that as of January 2014
- 74% of online adults use social media
- 71% of online adults use Facebook
- 23% of online adults use Twitter
- 26% use Instagram
- 28% use Pinterest and 28% use LinkedIn
- Source www.pewinternet.org/fact-sheets/social-networking-fact-sheet/

Social Media by Age Group

[Graph showing social media usage by age group from 2005-2013]
Who Uses Social Networking Sites

2017 Social Media Stats

- Facebook is the most common when you look at world stats on social media use
- It has over 1,870 million active users-used by 79% of active on line users
- This is 18% of market share
- That is 7% more than its closest competitor which is WhatsApp which is also owned by Facebook
- If the hospital wants to create a social media plan there is a free publication called the Social Media Management Checklist at www.smartinsights.com/guides/free-guide-to-create-a-social-media-marketing-plan/
Legal Issues in Social Media

Privacy and Social Media

- Some employers were using social media to make decisions about hiring an employee
- HR departments would review Facebook, LinkedIn, and other social media pages of current employees and job applicants
- Some even required the employee to give them a password so they could check on social media sites
- Many states have passed laws prohibiting this
- Initial Facebook firing case showed shift in NLRB to recognize employer’s right to maintain order in the workplace
Fire Me… Make My Day……

- Employee taunts her medical office employer on Facebook and posts the following:
  - "Fire me…Make my day….the employer is full of s
- Can the employer fire the employee?
- NLRB memo concludes yes
- Employee not engaged in protected concerted activity when she posts comments to a Facebook group account
  - Did not involve shared employee concerns-just a gripe from one employee
  - Make sure comments not concerted protected activity

The Test for Concerted Activity

- The test is whether the activity is engaged "in with or on the authority of other employees, and not solely by and on behalf of the employee himself."
- This can also include circumstances where an employee tries to initiate or prepare for group action or discussions prior to any actual plan for group action, and where complaints are brought to management’s attention
- This is all distinguished from “mere griping” or complaining that is unrelated to any future action

Use of Posts by Others

- School was doing a presentation on the dangers of social media
- There was a slide with the caption with “Once its there…it’s there to stay”
- Showed a picture of one of the students in a bikini
- The student sued alleging violations of her 4th and 14th amendment rights
- Court said no legitimate expectation of privacy
- Privacy settings to friends of friends was enough to constitute disclosure under third part doctrine
Be Careful What You Say on Facebook

• Be careful what you post on social media
• Woman in Texas fired from a daycare center because of her Facebook post
• 27 year old single mom, Kaitlyn Walls, was starting a new job at a child care center
• She writes “I start my new job today. But I absolutely hate working at day care. I just really hate being around a lot of kids.”
  ▪ After this she changes her privacy settings from public to private

Be Careful What You Say

• Another Texas woman posts on Twitter the following:
  ▪ I start this FU_ _ ass job tomorrow
  ▪ It was followed by seven thumbs down
  ▪ Her boss tweeted back the next day

Privacy and Social Media

• An employer might check LinkedIn to verify information on an application is correct
• Employers may be able to check Facebook, Twitter, MySpace etc. if employee called off and is really out partying
• Employers cannot use to discriminate against employees due to race, religion, sexual orientation or other protected class
• Part of the legal issue surrounds the person constitutional right to privacy and whether there was a reasonable expectation of privacy
Legal Issues in Social Media

- Copyrighted works, such as texts, videos, music, and photos are copied from one location and used on social media without permission of the author.
- Many employers have policies and procedures in place that address social media.
- Policies should be clear such as limiting language:
  - Employees are prohibited from using profane or abusive language where the language is uncivil, insulting, contemptuous, vicious, or malicious.
- P&P does not negate the risk of a lawsuit but can reduce frequency or lessen penalties.

Social Media Policies

- Should define employees' use and many say cannot do on company time.
- Should prohibit false information about patients, employees, or others.
- Remember General Counsel's Third Social Media Guidance Memo in 2013 that found six of the seven social media policies were overbroad.
- Employers may want assistance of legal counsel in drafting of their policies:
  - HR should seek the advice of legal counsel for more detailed information.

Confidentiality

- They want employees to be aware of their obligations not to disclose confidential or proprietary information:
  - This is especially true in healthcare because of the federal HIPAA law and the confidentiality of protected health information of patients.
- Nurse sees John Doe being treated for a STD at Guthrie Clinic:
  - Recognizes him as her sister-in-law's boyfriend and she texts him while he is being treated and she tells her boyfriend who complains about the nurse who is fired.
  - She is also sued for breach of confidentiality.
Legal Issues in Social Media

- Statements made on line that defame a person could result in legal actions against the poster.
- Posts made anonymously may be tracked via the IP address or similar techniques.
- One woman sued under the Fair Debt Collection Act after two debt collectors posted information about her debts on her MySpace page.
- The FTC issued rules requiring users of social media to disclose any paid endorsement if they discuss a product or service.
Legal Issues in Social Media

- If employees, especially managers, make discriminatory comments or use social media to harass employees liability can result.

- Although no federal law addresses bullying, in some cases it overlaps with harassment if based on race, color, national origin, sex, age, disability, or religion.

  - See stopbullying.gov and see Title VII Harassment Claim.

- In Espinoza v Orange County (Ct Appeals, CA 4th Dist, Div 3) employer liable for $820,00 for harassing actions of its employees it knew about and didn’t stop.

Legal Issues in Social Media

- In Espinoza, the plaintiff had a deformed right hand which was basis for harassment by other employees via blogs for eight months.

  - One employee wrote I will give 100 bucks if you get a picture of the claw.

  - Issues considered is if employees did on work time or in privacy or at home but in the case at bar the employer was aware.

  - Employers have a duty to monitor and to respond appropriately.

Discoverability in a Courtroom

- Also remember that electronic health records, voice mails, chat rooms and blogs and social media posts are discoverable.

- This means they can be used in the court room if relevant.

- It is discoverable despite privacy settings.

- Even emails that have been deleted may be retrievable.
Legal Issues in Social Media

- There are pros and cons to using social media
- To minimize liability do the following:
  - Use disclaimers
  - Ensure information is accurate
  - Know employers policies and procedures
  - Make sure information is de-identified
  - Ensure not violating professional boundaries which is discussed later
  - Separate your personal and professional life which is also discussed later

Social Media Cases
Social Media Bites Back

Case #1 Man Verses Train
Case #1 Man Verses Train

- In June of 2014, an emergency department nurse posts a picture on Instagram after a messy trauma from a patient hit by a subway train
- Nurses was busy working at New York Presbyterian Hospital
- The caption read “Man versus six train”
  - There was no patient name, no picture of the actual patient and no identifying medical information
- So what do you think happen to the nurse?
  - Nothing, disciplined, or should she be fired?

Case #1 Man Verses Train

- In the case at bar, the hospital fired her
- Katie Duke, the ED nurse, was told by her supervisor that she had not breached the hospital’s policy
- Nor had she violated the HIPAA privacy law
- In fact, she said the photo was not even hers but reposted from a doctor’s Instagram page
- Felt that posting the picture was unprofessional and insensitive
- Lesson: Be careful what you post on social media

Case #2 Five Nurses Facebook Posting
Case #2 Five Nurses Facebook Posting
- Five nurses in California were fired after discussing patients on Facebook
- The nurses worked at Tri-City Medical Center in Oceanside
- The hospital first put them on administrative leave and after three weeks of an internal investigation fired them
- The CEO said no patient names or identifying information was included in the posts
- Hospital did not provide details of the incident

Case #2 Five Nurses Facebook Posting
- The hospital did report this incident to the California Department of Public Health
- Employees are required to sign a social media agreement
- It notes that even if the patient is not identified by name or by medical record number, the information disclosed may identify a patient
- 3 years previously, the hospital fired five nurse and five staff members after taking cell phone pictures of a suicidal patient and patient x-rays

Case #3 Pictures of a Patient
- William Wells, a 60 year old patient, arrives in the emergency department at St. Mary’s Medical Center in Long Beach, California
  - He had been stabbed more than a dozen times by a fellow nursing home resident
  - His throat had been slashed and he was almost decapitated
- Instead of focusing on the patient, staff snapped pictures of him and placed them on Facebook
- Four staff members were fired
  - Source: The Journal of Nursing, July 1, 2010, ISSN 1940-6967
Case #4 Food Fight

Nurses were involved in a food fight while working at Stafford hospital which were downloaded on Facebook

- Nurse Victoria Cooper and Nursing Assistant Kim Pointon and the pictures were taken by Nurse Sam Parkes
- Shows nurses throwing yogurt and patient’s protein drinks on each other
- A recent report found that 1,200 patients needlessly lost their life as a result of poor nursing care
- This unit was highly criticized in the Healthcare Commission report

A relative of patient who had died from the neglect saw the pictures

- The person felt this was shocking and unprofessional
- The CEO said they would not tolerate unprofessional conduct by any of their staff
- The hospital would not say exactly what action was taken against the staff
- Again, be careful what you post on social media
Case #5 X-rays on Facebook

- In 2009, two nurses were fired in Lake Geneva, Wisconsin.
- The patient came to the emergency department at Mercy Walworth Medical Center.
- They took photos of a patient’s x-ray and posted them online on Facebook.
  - He had an object lodged in his rectum which was a sexual devise.
- In the case at bar, the hospital referred the case to the FBI because of concerns of HIPAA.
  - Note: The OCR has responsibility for HIPAA not the FBI.

OCR Has Jurisdiction Over HIPAA

[Link to HHS.gov/hipaa]
Case #6 Nurse Fired For Comments on Boss

- Guevarra worked as a staff nurse at Seton Medical Center for 12 years
- In May of 2012, shortly before she left for work, she posted the following on Facebook
- "Instead of spending my birthday celebrating, I will be working all night cleaning up feces. I loathe that effin heffer!!! Burn in hell you effed up spawn of satan. I curse you and wish you a lifetime of pain and suffering. That is not enough, right now I would give anything you small you down and pound you to unconsciousness. ‘Tang ina* mo!!!!!"

- "Thanks to the effin heifer who royally effect up my schedule, not only am I working Mothers Day, my birthday and my anniversary. And this Friday, I will be getting the smallest paycheck I had in 12 years due to the 17 percent pay cut we had to endure."
- A co-worker shared the post with Seton who called the police
- The next day she was fired
- She filed for unemployment and it was denied finding her rant disqualified her for benefits

- It was denied because she violated the hospital policy
- The policy prohibits threatening, intimidating, coercing, harassing, and abusive language or behavior
- She filed a lawsuit in court against Seton but the court said her post was a credible threat of violence and she was not whistle blowing
- Most hospitals have similar policies with a no tolerance of such behavior
Case #6 Nurse Fired For Comments on Boss

Case #7 Nurse Holding a Placenta

- This case was sensationalized by the news media
- Student had her picture taken smiling over a placenta in a plastic tray while holding the umbilical cord in her gloved hand at Olathe Medical Center
- Student was wearing a decal and visible hospital badge even though the patient was not identified
- It was posted to social media
- The four students were expelled from their nursing program in Overland Park, Kansas
Case #8 Nurse Uses Cell Phone
- RN was fired for using her cell phone to post comments to a social media website
- She did this while she was passing medications
- The hospital felt this was a patient safety issue
- It is well known that distractions during the medication process can result in errors
- It also violated the hospital’s policy about the use of personal cell phone calls during work

Case #9 Posts Picture of Intoxicated Patient
- Patient comes to the ED intoxicated and crying and a picture was taken with her connected to her IV at Northwestern Memorial Hospital
- A physician, Dr Vinaya Puppala, who knew the patient and was on duty, went to visit her
- He returned several hours later and took pictures of her and posted them on Facebook and Instagram
- She sued him and the hospital for $1.5 million dollars stating a breach of confidentiality and she has the potential to work for a Fortune 500 company which may not occur now because of the picture

Case #10 Facebook Post About First Lady
- Pediatric anesthesiologist, Dr. Michelle Herren, with Denver Medical Center is barred from seeing patients
  - She was terminated from her teaching position after posting racially insensitive Facebook comments about the first lady
  - She published an unflattering image of Mrs. Obama yelling on Facebook, accompanied by comments referring to the first lady as “monkey face” and said “Doesn’t seem to be speaking too eloquently here, thank god we can’t hear her! Harvard?? That’s a place for “entitled” folks said all the liberals!”
Facebook Post About First Lady

Anesthesiologist Dealing with Fallout Following Racially Insensitive Facebook Post About First Lady

After posting incendiary comments about Michelle Obama, Denver anesthesiologist banned from seeing patients and likely to be terminated from teaching position.

Category: General Surgical News and Reps

Denver Health issued a response and said they are deeply disappointed by the remarks posted on social media by Dr. Michelle Herren against the First Lady of the United States.

We are offended by the comments made by this individual, who was acting independently in her private capacity. Her views are contrary to the mission and values of Denver Health, and to our staff and patients.

School of Medicine said had communicated directly with her and reminded her “about her responsibilities as a faculty member to conduct herself with civility.”

Conduct Her Self with Civility

"Denver Health issued a response and said they are deeply disappointed by the remarks posted on social media by Dr. Michelle Herren against the First Lady of the United States.

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Is There A First Amendment Right??

Another article published on this case said the 1st Amendment protects those in the public sector which makes it difficult to terminate or take action against an employee for offensive statements they make outside of the workplace.

“Government employers can impose restrictions on statements made within the workplace or referring to the workplace, but they can’t act on statements made outside the workplace.”

But now the physician will have to litigate to get her job back and if not posted would not have to do this.
Case #11 Facebook Threat

- No one should ever make a threat on Facebook
- This could subject the person to criminal charges
- An Indiana man was convicted for maliciously conveying false information on Facebook
- He posted a plan to kill police officers and judges
- He also threatened to burn down the Courthouse
- He said it was meant to read as satire
- He got 41 months in prison

Case #11 Facebook Threat

- The police searched his house and found thermite which burns at a very high level
- He deleted the post about a half-hour later
- However, a screen shot was already sent to police
- He was convicted for violating a federal law that bars using instruments of interstate commerce to maliciously convey information that is known to be false about an attempt to kill any individual or to destroy any building by fire or explosion
Hospital Policy on Social Media

- Most hospitals now have a policy on social media
- It is usually located in the HR manual
- All employees should review and be aware of what is in their hospital social media policy
- Hospitals have policies required by HIPAA on confidentiality of protected health information which all staff must follow
- Some hospitals even post them on the internet to make it easy to find and read
A white paper has been published called the "Nurse’s Guide to Social Media"

NCSBN or the National Council of State Boards of Nursing

7 pages long and published August of 2011

Inappropriate use of electronic media by nurses has been reported to the state board of nursing

Nurse does not want to lose their license

This provide guidance to nurses to use electronic media in a manner to protect confidentially
Nurse’s Guide to Social Media White Paper

• Nurses are increasing using blogs and social networking sites to share workplace experience
• Especially if challenging or emotionally charged
• Without a sense of caution the nurse can risk disclosing too much and violating confidentiality
• Healthcare organizations generally have policies that address the use of media in the workplace
• May address websites that may not be accessed during work hours

Nurse’s Guide to Social Media White Paper

• Board of Nursing (BON) may investigate reports of inappropriate disclosure on social media on grounds of:
  • Unprofessional conduct, unethical conduct, moral turpitude, mismanagement of patient records, revealing a privileged communication or breach of confidentiality
  • 33 stated BONS received complaints of nurses who posted photographs or information about patients on social media
• Nurse can face personal liability
  • Patients can sue for breach, defamation, invasion of privacy
Nurse’s Guide to Social Media White Paper

• Nurse can be fired by their employer

• Some nurses have a mistaken belief it is acceptable to discuss the patient if not identified by name

• Gives examples of nurses disciplined
  
  • Bob, an LPN, asks the resident’s brother if he could take a picture since the patient was incompetent. He gave permission but that night in a bar he showed the picture and discussed the resident with a former employee. He was disciplined by the BON for discussing confidential information
  
  • It should not be disclosed to someone no longer caring for the patient

• Nursing student asks 3 year old if she could take his picture and he agrees. She posts it to her website “This is my 3 YO leukemia patient who is bravely receiving chemotherapy. I watched the nurse give it today and it made me proud to be a nurse.”

• Dean saw it and notified the hospital

• Emily was expelled from the program

• The nursing program was barred from having students on the pediatric unit

• Hospital notified OCR

References


Federation of State Medical Boards
Model Policy Guidelines for Social Media

Federation of State Medical Boards Policy

- Federation of State Medical Boards issued a 17 page document
- Called the Model Policy for the Appropriate Use of Social Media and Social Networking in Medical Practice
- Report of the Special Committee on Ethics and Professionalism
- For use by the state medical boards
- Important to protect patient confidentiality and to maintain standards of professionalism

Use of social media is increasing and discusses that in 2011:
- 87% of physicians used social media for personal use
- 67% of physicians used social media for professional purposes
- 16% of physicians reported visiting the online profile of a patient or patient’s family member
- 35% of physicians have received a friend request from a patient

Noted that medical school students and residents have been disciplined for posting unprofessional online content
- Physician licensing boards have reported similar instances
- Discusses many of the same issues identified in the AMA document on professionalism in social media
- ED physician uses disrespectful language in his blog because of frustration of patient’s multiple visits for failure to monitor her blood sugar-calls her lazy and ignorant

A concerned patient notes that her physician frequently describes partying on his Facebook account which shows images of him intoxicated
- Now the patient is questioning if her physician is sober and okay to treat her in the morning
- A psychiatrist used Facebook to converse with a patient she took care when she was a resident
  - They hit it off with similar tastes in music and art and now she is going to be in same area as patient and is it okay to catch up?
- These are all case of professional boundaries
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<tr>
<th>Federation of State Medical Boards Policy</th>
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<tr>
<td><strong>There must be parity of ethical and professional standards to ensure a proper doctor-pt relationship</strong></td>
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<tr>
<td><strong>Information contained on the doctors website should be truthful and not misleading or deceptive</strong></td>
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<tr>
<td><strong>It must be up-to-date and easy for patients to understand</strong></td>
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<tr>
<td><strong>Document included guidelines for physicians who use social media and social networking</strong></td>
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<td><strong>Discouraged from interacting with current or past patients on social media such as Facebook</strong></td>
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<tr>
<td><strong>Physicians should only have online interactions with patients when discussing their medical treatment</strong></td>
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<td><strong>These should never occur on personal social networking or social media website</strong></td>
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<tr>
<td><strong>Social networking may be useful places for physicians to gather or share experiences</strong></td>
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<td><strong>Such as Doximity with more than 567,000 US physicians and can exchange HIPAA compliant messages</strong></td>
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<td><strong>Should ensure only verified and registered users have access and ensure it is password protected</strong></td>
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<tr>
<td><strong>Of course, patient privacy must be protected</strong></td>
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<td><strong>Never provide any PHI that could identify a patient</strong></td>
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<tr>
<td><strong>Use separate personal and professional social networking site</strong></td>
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<td><strong>Report any unprofessional conduct witnessed</strong></td>
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<tr>
<td><strong>Cyber-bullying toward anyone is unprofessional</strong></td>
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<tr>
<td><strong>Follow the employer’s social media policy</strong></td>
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<tr>
<td><strong>Do not misrepresent credentials and if occurred can be disciplined by state medical board</strong></td>
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</table>
Federation of State Medical Boards Policy

- State medical board can take action on:
  - Failure to reveal conflicts of interest
  - Online violations of confidentiality
  - Online derogatory remarks regarding a patient
  - Using the internet for unprofessional behavior
  - Online depiction of intoxication
  - Discriminatory language or practices online

Professionalism Violations JAMA Article

- Surveyed 68 Executive Directors of medical and osteopathic boards in the US
- To find out what violations of online professionalism was reported to them
  - Done in partnership with Federation of State Medical Boards (FSMB)
- Disciplined 88% of the 850,000 physicians reported
  - Most common was inappropriate patient communication online regarding sexual misconduct 69%, use of internet for inappropriate use such as prescribing without clinical relationship 63%, and online misrepresentation of credentials 60%.
Resources

- Many physicians are using the internet for both clinical and social purposes and concerns have been raised about the boundaries of professionalism. The report discussed the physician’s nonclinical use of the internet including social media.

AMA Professionalism in the Use of Social Media
AMA Professionalism in Social Media

- AMA, Opinion 9.124, is on the professionalism in the use of social media
- Issued June 2011 based on the report “Professionalism in the Use of Social Media”
- Social media, blogs, and other online communication create new challenges in the doctor-patient relationship
- Need to consider a number of things
- Use privacy settings to safeguard personal information

Don't post identifiable patient information or PHI

- Monitor the information on their own websites to make sure it is accurate and appropriate
- Maintain appropriate boundaries
- Separate personal and professional content
- If one sees inappropriate content posted by colleagues bring it to their attention or report it if they refuse
- Recognize that online actions can affect their reputations among patients and colleagues
AMA Council Use of Social Media

- The AMA report of the Council on Ethical and Judicial Affairs, Professionalism in the Use of Social Media, CEJA Report 8-I-10
- 7 page document
- Many requests by different groups to the AMA to study physician use of social networking
- Concerned about the blurred boundaries of the patient-physician relationship related to social media

Professionalism in Use of Social Media

- Individual users can use privacy controls to limit who is able to view their personal pages
- Also discusses web log or blog where individuals post opinions and podcasts such as pre-recorded audio or videos
- Discusses wikis which are web sites that allow easy creation and editing of web pages
- Medical student blogs about a difficult patient and the family member has access to it
- Medical resident asks for a date with a patient after he learns she is single from a social networking site
Professionalism in Use of Social Media

- Noted one article that found many violations of HIPAA and breaches of confidentiality
  - Physician blogs provided sufficient information to identify the patients
  - OCR has had many large fines against physicians and hospitals for breach of confidentiality
  - Website at www.hhs.gov/hipaa/index.html

- Another study found medical students have posted unprofessional content such as sexually suggestive pictures, profanity, discriminatory language, pictures of themselves or peers in drug use

Office of Civil Rights  HIPAA Police

Professionalism in Use of Social Media

- States medical students were not aware of how online posting affects negatively on medical professionalism or can jeopardize their careers
  - Mentions the AMA Code of Ethics already contains guidance on interactions and communications with patients and other opinions
  - Sharing patient stories that are de-identified and respectful can encourage understanding
  - Need to consider boundary issues
    - Don’t let personal interests take precedence over their primary obligation to the patient
Professionalism in Use of Social Media

- Online friendships with patients are problematic
- Do not accept request to connect with patients on social media to protect the professional relationship
- Some professional groups have set standards like Florida judges may not friend lawyers who appear before them because of conflicts of interest or the appearance of impropriety
- Mentions the same recommendations as discussed previously

Anesthesiology Mocks Patient

- Virginia patient was awarded $500,000 after being mocked by an anesthesiologist during a colonoscopy
- Patient accidentally recorded it
- Tiffany Ingham said to patient while he was sedated “After five minutes of talking to you in pre-op, I wanted to punch you in the face and man you up a little bit.”

Anesthesiology Mocks Patient

- Medical assistant noted the man had a rash
- Ingham told her not to touch it saying she might get some syphilis on your arm or something
- Then she said "It's probably tuberculosis in the penis, so you'll be all right."
  - In 2015, the jury awarded the man $100,000 for defamation, $50,000 each for the comments about the man having syphilis and tuberculosis and $200,000 for medical malpractice, as well as the $200,000 in punitive damages
  - She no longer works for Aisthesia Anesthesia practice in Bethesda Maryland
- Should the physician be disciplined?
CDC’s Health Communication Social Media Toolkit

CDC Health Communicator’s Social Media
- CDC has a free publication known as the Health Communicator’s Social Media Toolkit
- Designed to share lessons learned in three years of integrating social media into health communication campaigns
- This includes activities and emergency response efforts
- Discusses how to best communicate objectives to creating a social media strategy
  - To provide users access to credible health information

CDC Social Medial Toolkit

www.cdc.gov/healthcommunication/ToolsTemplates/SocialMediaToolkit_BM.pdf
FTC CAN-SPAM Act

CAN-SPAM Act

- The CAN-SPAM Act is a US law that regulates commercial email messages.
- It also requires a method for the recipient to opt-out or unsubscribe.
- The email must include the sender’s physical postal address (street address or private mailbox).
- It applies to email where the primary purpose is the commercial advertisement of a commercial product, goods, land, or service.
- Can’t use a false or misleading header information and from or to must include originating name and email.

US Federal Law Called CAN-SPAM Act
The Federal Stored Communication Act

Stored Communication Act SCA
- The Stored Communication Act is a federal law effective October 21, 1986
- It addresses voluntary and compelled disclosure of stored wire and electronic communications held by internet service providers (ISP)
- It prohibits unauthorized access of stored and wire communications intended to be private
  - It covers private Facebook posts
- Sometimes the 4th amendment doctrine has held that users relinquish any expectation of privacy when using an ISP
Stored Communication Act SCA

- Generally need a search warrant and probable cause to search your home
- Under third party doctrine may sometimes only need a subpoena and prior notice which is a much lower threshold to compel an ISP to hand over the contents of an email or files served on a server
- In Ehling v. Monmouth-Ocean Hosp. Serv. Corp., (Aug 2013) the plaintiff is a RN and paramedic and worked for the hospital
- She had a Facebook account where only her friends could view

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DEBORAH EHLING,
Plaintiff,

v.
MONMOUTH-OCEAN HOSPITAL
SERVICE CORP., et al.,
Defendants.

Opinion

I. BACKGROUND

Plaintiff Deborah Ehling filed this action against Monmouth-Ocean Hospital Service Corp. ("MONOC"), Vincent Robinson, and Stacy Quagghen (collectively, "Defendants"). This matter comes before the Court on Defendant's motion for summary judgment under Federal Rule of Civil Procedure 56. There is no written agreement. Fed. R. Civ. P. 56(a).

II. DISCUSSION

A. The facts are not in dispute.

B. The applicable law is clear.

C. The analysis is straightforward.

D. The conclusion is clear.

E. The result is clear.

III. CONCLUSION

Plaintiff Deborah Ehling in a case for her hospital which provided a lack of disregard for patient safety and dismissed the claim that under SCA even though it applied because of an exception in the law.

Stored Communication Act SCA

- She gave her friend access who then provided it to management without any solicitations
  - If hospital has solicited it would have been a violation
- She viewed a post she made regarding a shooting that took place at the Holocaust Museum in DC
  - Hospital suspended her because of the post
  - The supervisor sent a copy to the New Jersey Board of Nursing which they felt showed a lack of disregard for patient safety
  - Dismissed the claim that under SCA even though it applied because of an exception in the law
Ehling’s Facebook Criticizing EMTs

- An 88yr old sociopath white supremacist opened fire in the Wash D.C. Holocaust Museum this morning and killed an innocent guard (leaving children). Other guards opened fire. The 88 yr old was shot. He survived. I blame the DC paramedics. I want to say 2 things to the DC medics. 1. WHAT WERE YOU THINKING? And 2. This was your opportunity to really make a difference! WTF!!!! And to the other guards…go to target practice.

Stored Communication Act SCA

- However, the court said she may have a claim for invasion of privacy
- She may have had a reasonable expectation that her Facebook posting would remain private
- She had taken steps to protect her Facebook page from public viewing which is important in the case
- If not there would not have been any reasonable expectation of privacy
- Privacy determinations are made on a case by case basis

In Summary
In Summary

- Have a social media policy
- Train staff on the policy
- Ensure the hospital has a mobile device policy and do a risk assessment for mobile devices
  - There are resources on this from HealthIT.gov
  - Go to www.healthit.gov/providers-professionals/your-mobile-device-and-health-information-privacy-and-security
- Ensure the hospital’s website is in compliance
- Do not disclose any patient medical record information or protected health information (PHI)

Mobile Device Security Information

In Summary

- Do not refer to patients in a disparaging manner, even if the patient is not identified
- Maintain professional boundaries in the use of electronic and social media
- Do not make disparage remarks about employers and co-workers
- Do not make threatening, harassing, profane, obscene, sexually explicit, or derogatory racial or offensive comments
The End! Questions??

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