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**How is social media being utilized by health care professionals, and what issues does it raise for compliance officers?**

- Privacy and Security
- Professionalism
- Other considerations, i.e., endorsement, harassment and discrimination, reputational harm, quality of care

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**Social media: Internet-based tools that allow individuals and communities to gather and communicate\***

- Patient and public health information;
- Communication;
- Marketing efforts;
- Professional networking;
- Research and collaboration;
- Research study recruitment;
- Trainee and medical student education.

Ventola, C. Lee, "Social Media and Health Care Professionals: Benefits, Risks and Best Practices", P&T, 7/2014, 491.

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### Featured topics

- Photos and videos
- Communicating with patients through social media
- Doctor networking sites
- Online patient reviews
- HR/med staff office considerations
- What's next
- Recommendations for compliance officers

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### Considerations for professionals utilizing social media

- Maintaining privacy and security—both for patient and professional;
- Upholding professional standards;
- Preserving the physician/patient relationship;
- Complying with employer/hospital policies and law;
- Becoming an educated user—understand risks/benefits and limitations.

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### Privacy and security and social media

- Protected health information ("PHI") is broadly defined.
  - Any information created or received by provider;
  - That relates to the health or condition of an individual or which potentially can be used to identify the individual
    - That is transmitted by or maintained in electronic media or other form.
- Examples: demographic info, photos, email address, unique identifying characteristics



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### Using and releasing PHI

- Authorization required to release PHI;
- Has to be in writing on a specific form;
- OK to release PHI without an authorization for:
  - Treatment
  - Payment
  - Health care operations
- "Minimum necessary" standard



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### Professionalism in use of social media

- AMA report discussing ethical implications of physicians' nonclinical use of the internet.\* Notes "searchable, enduring records of exchanges; fostering of "disinhibition and feelings of anonymity and invisibility"; "post on networking site may reach millions of people in a matter of minutes."
- Recommendations:
  - Maintain physician patient boundaries;
  - Maintain patient confidentiality;
  - Recognize that online self presentation affects reputation and may have consequences;
  - Physicians' self presentation online;
  - When physicians see content posted online by colleagues that appears unprofessional, they have an ethical responsibility to act.

\*Rebecca Shore, Julia Healey, Kavita Shah, Beth Jane Cragger, and Sharon P. Douglas. "Report of the AMA Council on Ethical and Judicial Affairs: Professionalism in the Use of Social Media." *The Journal of Clinical Ethics* 22, no. 2 (Summer 2011): 165-72. See also AMA Code of Ethics. See also parallel guidelines issued by Federation of State Medical Boards (FSMB); National Council of State Boards of Nursing (NCSBN).



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### Photos - Guidance for Professionals

- Never take pictures of patients on unencrypted mobile devices;
- Even if pictures are taken with appropriate consent on encrypted device, if forwarded to unencrypted device, data is not secure;
- Recommend adoption of policies requiring review and confirmation of appropriate consent prior to any potential posting of patient picture/video to social media.

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### Search engines amplify ability to identify individuals

- Inputting small amount of info into search term will generate potentially relevant "hits";
- Increases potential for inadvertent privacy violations;
- Example: RI ED physician posted on Facebook about trauma patient identifying nature of injury; patient identified by 3<sup>rd</sup> parties, MD fired.
- Example: "#man vs. 6 train": NY ER nurse posted photo of blood stained trauma room.

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### Other considerations

- Casual "private" friend groups on social media should not be used for professional patient discussions.
  - Not encrypted
  - Information can be forwarded or shared inappropriately
- Facebook live/skype
  - Not secure
  - Patients/workplace/other associates in background?
  - Can be recorded by viewers

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### Patient “friending” & “following”

- Keep personal and professional social media accounts separate, make personal accounts “private”
- Generally discouraged
  - Possibility of blurred patient/doctor relationship
  - Don't provide medical advice to patient on nonclinical social media
  - Suggest patients who want to connect to professional secure patient portal or make appointments
  - Make appropriate disclosures and disclaimers on any information that could be construed as medical device
- Can be difficult to avoid entirely
  - Always assume everyone may see profile
  - Ex. political/social activism, alumni groups

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### Marketing/Advertising

- Caution around creating impression that your personal opinion is on behalf of the organization;
- Be aware of inadvertent product endorsement or advertising;
- Physicians who are active in social media should disclose industry relationships if any concern re product endorsement.\*

\*Derrick L. Tao, BS, Aaron Boothby, BS, Joel McLouth, BS, Vinay Prasad, MD, MPH, "Financial Conflicts of Interest Among Hematologist-Oncologists on Twitter", JAMA, 11/7/2017; 2

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### Patient on-line reviews

- AMA study: over 60% patients found MD web reviews either somewhat or very important;
- Most patient reviews are positive, and 75% of negative reviews are not related to incorrect treatment;
- Challenging to deal with negative reviews: generic response with no PHI (or disparagement), or response from provider directly to patient (offline) may not violate HIPAA, but any PHI disclosure may result in agency scrutiny\*
- Some professionals have employed “reputation management companies”\*\*

\*Orstein, Charles, "Slung by Yelp Reviews, Health Providers Spill Patient Secrets", Pro Publica.org 05/27/2016  
 \*\*Wang, Shirley, "What Doctors are Doing About Bad Reviews Online", WSJ 06/25/2017

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### “Facebook” for doctors

- Platforms that facilitate networking and sharing of medical knowledge
- Virtual doctor lounges
- Crowdsourcing of challenging cases
- Examples: Sermo, Doximity, SharePractice, Figure1

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### Sermo

- 800,000+ reported users, international
- Limited to physicians only—platform validation
- Promises anonymity
- Onus on physicians posting cases to de-identify data
- Market research component, industry advertisement

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### Social media policy

- Provides guidelines to assist employees in making professional and responsible decisions when using social media.
- Applies to employees who are:
  - On or off duty
  - On or off work premises
  - Using work computer or their own personal computer.
- Consider development of supplemental policy focusing on clinicians –clinical and nonclinical guidelines tied to professionalism standards

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### Other potentially related policies governing workplace behavior

- Non-Discrimination and Anti-Harassment
- Disruptive Conduct
- Medical Staff bylaws or Rules and Regulations
- Drug and Alcohol Policy
- Non-Violent Workplace

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### When can an employer discipline or discharge employee for social media activity?

- Violates HIPAA
- Disloyal, reckless, or maliciously untrue
  - employee knew the information to be untrue
- Disparagement of employer, its services, or employees, which is not tied to any term or condition of employment.
- Discriminatory or offensive comments, photos or jokes based on a person's protected classification, such as race, religion, sex, age
- If posting while on duty and on the employment site:
  - Involves threats of violence or physical harm
  - So grossly insubordinate, as long as insubordination is not tied or provoked by an Employer's Unfair Labor Practice.

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### Negligence issues for employers

- Employee complaints about discrimination, harassment, or other workplace issues
  - Negligent hiring, retention, supervision
  - Did the company know or have reason to know?
  - What did the company do in response?
- May create new duties for yourself based on information found online

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## The future?

- Facebook negotiating with hospitals and medical groups to share data about social networks of vulnerable patients.
- Proposal to build patient profiles combining information on medical issues held by providers, with social and economic data culled from Facebook.
- Project put on hold in light of recent events involving Facebook.

\*Source: CNBC, Farr, Christina, 4/5/2018

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## Next steps for compliance officers

- Update social media guidelines, anticipating new developments and technology
  - involve marketing and PR departments, early adopter MDs, plus HR
- Education for professionals
  - Especially medical residents/students on boundaries for professional/personal media use
- Organization should monitor social media and offer support to professionals seeking to utilize

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