



Social Media & Risk Management

What You need to Know

Heather Annolino, RN, MBA, CPHRM
Director, Risk-Quality-Safety Consulting Services
Clarity Group, Inc.
8725 West Higgins Road, Suite 810
Chicago, IL 60631

Objectives

- Look at the current state of social media in healthcare
- Define social network, social media and its forms
- Awareness of social media guidelines and pitfalls
- Identify strategies to effectively manage social media to avoid Privacy/HIPAA violations

Define Social Media

- **Social networks** are a group of people linked to each other by one or more common attributes, such as family, friendships, interests, career, industry, etc.
- **Social Media** are the tools:
 - **Blogs**-group of authors can post articles that encourage feedback, open ended interaction between the author and reader; oldest form social media.
 - **Microblogs**-similar to blogs except posts come with limits in length; Twitter is an example.
 - **File-sharing sites**-emphasize sharing files of various media; YouTube or Flickr are examples. What unifies them is idea of social element that invites user feedback by comments or sharing of files.

<https://www.ncbi.nlm.gov/pmc/articles/PMC4103576/>

Define Social Media

- **Social Media** are the tools:
 - **Integrated social media**-Facebook is an example, they integrate microblogging through status updates, full blogging through notes features.
 - **Location-based social media**-allow users to check in locations for GPS enabled devices such as Foursquare. Location owners can offer specials based on check-ins.

<https://www.ncbi.nlm.gov/pmc/articles/PMC4103576/>

Interesting

- A June 2010 report Nielsen Company estimated social media use accounted for nearly a quarter of all Internet time
- 60% doctors believe social media can 'enhance' quality of patient care
- Pediatricians and family physicians might have the advantage-parents look to Facebook and Twitter for advice on health related topics
- Worldwide there are over 1.86 billion monthly active Facebook users
- Ages 25-34, 29.7% of users of Facebook
- 2 billion views per week for YouTube

"Top 20 Facebook Statistics - Updated April 2017." *Zephoris Inc.* N.p., 03 Apr. 2017. Web. 18 Apr. 2017.

Useful Tool?

- Success stories
- Better serving patients
- Increase brand awareness
- Promote community health
- Extension public relations plan
- Community outreach and engagement
- Staff recruitment
- Teaching tool
- Emergency Announcement

Outreach, Education and Research

- Mayo Clinic has pioneered the application of social media to promote health, fight disease and improve healthcare with their Center for Social Media
 - 450,000+ followers on Twitter
 - 300,000 connections on Facebook
 - Popular channel on YouTube
 - Free app on iTunes to connect with others with similar interests
- Kaiser Permanente helps connect public to reputable sources of healthcare information and online communities in nearly 50 categories
- Recruiting for clinical studies

New Channels/New Risks

- HIPAA/Patient Privacy
- Regulatory policy enforcement
- Cybersecurity threats
- Fraud and abuse
- Litigation

Social Media Use in Healthcare

- **Facebook**-physician profiles, question and answer, links to websites
- **Twitter**-daily wellness tips, seminar announcements and quotes, discussion of procedures
- **LinkedIn**-recruitment, human resources, professional forums
- **YouTube**-patient stories, disease information



Guidelines and Pitfalls

Friend or Foe

- Privacy and HIPAA violations
- Blurring lines between professional and personal relationships
- Violating employee privacy
- Denying job candidates or terminate employment because of on-line posting
- Physician licensing
- Liability for employee posts on business

Dispel the Myths on Disclosure of Patient Identifiers

- Commenting on a friend's Tweet can be risky
- Posting controversial comment on Facebook
- MySpace page details given
- Pictures on Facebook

AMA Guidelines

- Be aware of standards for patient privacy/confidentiality; ensure appropriate protection for transmitting
- Use privacy settings to safeguard information; these are Not absolute
- Maintain appropriate boundaries of patient-physician relationship
- Report unprofessional posting
- Do not post identifiable information about clients, patients or affiliate care providers
- Avoid searches on people that you relate with professionally
- Create separate business and professional pages in social media

Nursing Council of State Boards of Nursing Social Media Guidelines

- Nurses must recognize they have an ethical and legal obligation to maintain patient privacy and confidentiality at all times.
- Nurses must not transmit, by way of any electronic media, any patient-related information or image that is reasonably anticipated to violate patient rights to confidentiality or privacy or to otherwise degrade or embarrass the patient.
- Nurses must not share, post, or otherwise disseminate any information, including images, about a patient or information gained in the nurse-patient relationship with anyone unless there is a patient care related need to disclose the information or other legal obligation to do so.

Nursing Council of State Boards of Nursing Social Media Guidelines

- Nurses must not identify patients by name, or post or publish information that may lead to identification of a patient. Limiting access to postings through privacy settings is not sufficient to ensure privacy.
- Nurses must not refer to patients in a disparaging manner, even if they are not identified.
- Nurses must not take photos or videos of patients on personal devices, including mobile devices.
- Nurses must maintain professional boundaries in the use of electronic media.

Nursing Council of State Boards of Nursing Social Media Guidelines

- Nurses must consult employer policies or an appropriate leader within the organization for guidance regarding work-related postings.
- Nurses must promptly report any identified breach of confidentiality or privacy.
- Nurses must be aware of and comply with employer policies regarding use of employer-owned computers, cameras, and other electronic devices and use of personal devices in the workplace.
- Nurses must not make disparaging remarks about employers or coworkers.

Spector,, Nancy, and Dawn M. Kappel. "Guidelines for Using Electronic and Social Media: The Regulatory Perspective." *Guidelines for Using Electronic and Social Media: The Regulatory Perspective*. The Online Journal of Issues in Nursing, Sept. 2012. Web. 18 Apr. 2017.

Conflict with NLRB and Social Media Policies?

National Labor Relations Act (NLRA) applies to all employees, protects concerted activity which includes an employees' ability to form, join or assist a union; choose representatives to bargain with the company on their behalf; act together with other employees for mutual benefit and protection.

- Recently, 2015, NLRB held Whole Foods Market, Inc. the company's no recording policy unlawfully restrained employees' Section 7 rights.
- Specifically, employer may not prohibit employees from recording the following: protected picketing, unsafe equipment or workplace conditions, discussions with others about terms and conditions of employment, inconsistent application of employee rules and recordings that preserve evidence for later use in administrative/judicial forums in employment-related actions.

Dadika, Denise. "Protecting Patient Privacy in Light of the NLRB." *Protecting Patient Privacy in Light of the NLRB's Scrutiny of No-Recording and Social Media Policies - Lexology*. Epstein Becker Green, P.C., 28 Dec. 2016. Web. 17 Apr. 2017.

Conflict with NLRB and Social Media Policies

The NLRB upheld a recording restriction implemented to protect patient privacy. It ruled the hospital's policy prohibiting recording images of patients, hospital equipment, property or facilities was lawful because “the privacy interests of hospital patients are weighty” and the hospital had a “significant interest in preventing wrongful disclosure of individually identifiable health information.”

Takeaways

- Review and revise no-recording and social media policies to ensure that they are narrowly tailored to protect patient privacy and the disclosure of PHI.
- Be sure that the policies clearly explain that any restrictions on workplace recordings are due to patient privacy and HIPAA obligations and are not intended to infringe upon employees' Section 7 rights.
- Consult with counsel to have the social media policies reviewed. Law in this area is changing.
- Consult with counsel before disciplining an employee for making a workplace recording or posting patient information on social media.

Employment Actions

- Discrimination
- Harassment
- Wrongful termination
- Leaking proprietary/or confidential information

HIPPA Violations Based on Common Misconceptions

- Mistaken belief that communication is private
- Mistaken belief that content has been deleted or no longer accessible
- Mistaken belief that the site is private
- Mistaken belief that there is no breach if no patient name is disclosed
- Mistaken belief by employees that disclosure on their own social media networks is not actionable

Solitary use of the Internet, even while posting to a social media site, can create an illusion of privacy.

Spector,, Nancy, and Dawn M. Kappel. "Guidelines for Using Electronic and Social Media: The Regulatory Perspective." *Guidelines for Using Electronic and Social Media: The Regulatory Perspective*. The Online Journal of Issues in Nursing, Sept. 2012. Web. 18 Apr. 2017.

Case Example

As a registered nurse for more than 20 years, Jane knew the importance of safeguarding a patient's privacy and confidentiality. One day, she used her personal cell phone to take photos of Claire, a resident in the group home where she worked. Jane received permission from Claire's brother to take the photo since she was unable to give consent due to her mental and physical condition. That evening, Jane ran into William, a former employee of the group home. While catching up, she showed William the photo of Claire and discussed her condition with him. The administrator of the group home later learned of Jane's actions and terminated her employment for breach of confidentiality.

Nurses Guide to Social Media. National Council of State Boards of Nursing, n.d. Web. 18 Apr. 2017.

Potential Consequences

Potential consequences for inappropriate use of social and electronic media by nurses vary. Consequences depend, in part, on the particular nature of the nurse's conduct.

- Instances of inappropriate use of social and electronic media may be reported to the BON.
- Laws outlining the basis for disciplinary action by a BON vary between jurisdictions.

Nurses Guide to Social Media. National Council of State Boards of Nursing, n.d. Web. 18 Apr. 2017.

Potential Consequences

- Depending on the laws of a jurisdiction, a BON may investigate reports of inappropriate disclosures on social media sites by a nurse on the grounds of:
 - Unprofessional conduct;
 - Unethical conduct;
 - Moral turpitude (defined as conduct that is considered contrary to community standards of justice, honesty or good morals);
 - Mismanagement of patient records;
 - Revealing a privileged communication; and
 - Breach of confidentiality.

Nurses Guide to Social Media. National Council of State Boards of Nursing, n.d. Web. 18 Apr. 2017.



Risk Management Considerations

Training

- Educate staff on appropriate use of social media using real life examples
- Regularly test staff on policy comprehension
- Consider a certification type program for those authorized to use social media on behalf of the organization
- Define authorized users through a social media plan
- Policies should clearly address whether and how photos of patients can be taken and used
- Training should address consequences of violating patient privacy
- Document HIPAA privacy training
- Policies to address reputation management

Training

- Responding to complaints about care received, specific staff persons, amenities, billing practices, or any other aspect of the organization
 - Staff should be instructed not to try to solve problems through social media
 - Reply to the complaint by acknowledging it and inviting user to contact facility through established mechanism
 - Maintain courteous, professional attitude
- Understanding of what management users can recommend or 'endorse' on sites such as LinkedIn
- Ensure education on types of competitive knowledge that cannot be shared via social media

Training

- Education using scenarios and potential impacts
- Provide examples of what is permissible and what is not

Your employees are your brand, their behavior online may reflect on the organization



Training

Patient posts on hospital's Facebook page, " XYZ Hospital is terrible! They show no compassion for their patients who are in pain. My back is killing me for months and they just keep throwing narcotics at me instead of getting to the root of the problem!"

"Return for a re-evaluation of your back free of charge "

versus

"We invite all patients to contact our Patient Advocate to communicate concerns."

Risk Strategies

- Establish policies to address who can access social media
- Develop workflows to approve content before it is posted
- Develop and regularly test a crisis management plan
- Develop process for responding immediately to complaints related to social media
- Actively monitor your sites that your organization monitors
- Regularly train employees on recording/social media policies and on HIPAA compliance
- Review and revise policies annually for protecting patient information as pertains social media

Create a Committee

- Create cross-functional committee to develop your Social media Plan and Guidelines:
 - Risk Management
 - IT
 - Corporate communication/marketing
 - Corporate compliance
 - HR
 - Corporate counsel
 - Frontline staff

Include all generations!

Social Media Plan

- Observe and follow the social media plan that outlines the organization's goals and intended audience in using social media
- Define which staff other than the accountability group or individual may participate in the organization's official social media
- Identify which social media tools are being used to support the various goals listed in the social media plan

Risk Considerations

- Organizations are responsible for employees disclosing any individual identifiable health information through any platform
- Fast-paced nature and informal structure social networking sites
- Defense and plaintiff attorneys will see if patient's social media use invalidates claims
- Destruction of professional image

Conclusion

Privacy

Reputation

Medical
Liability

Employment
Issues

Social Media



Thank You!

Heather Annolino, RN, MBA, CPHRM
Director, Risk-Quality-Safety Consulting
Services

hannolino@claritygrp.com

Clarity Group, Inc.

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