

BEWARE OF SOCIAL MEDIA LIABILITY:

Challenging Medical Case Studies

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Social media use by clinicians and patients alike is growing exponentially. Whether or not you are active online, social media activity by others can impact you personally. There are many valuable uses of professional social media and other online activities for physicians, some of which also are of high value to their patients. Amid the jungle of information, misinformation, tweets, posts and pictures, readers are seeking physicians' medical advice. The desire for physician-authored information online is great, and it is in our professional interest to meet this need.^{1,2} However, medical professionals should understand potential liability risks and follow general best practices. Some basic tenants of professional social media use include:

1. Share your expertise, and take care to ensure accuracy. Patients want and deserve high-quality medical information provided by specialists on the internet. Be clear that you are providing general educational information, and not specific medical advice to any individual.³
2. Respect HIPAA and patient privacy. Do not post information that can identify a patient.⁴
3. Consider the time and place, so be wary of using social media during patient care.
4. Respect your institution's social media policy, if one exists. In any case, avoid posting negative content about your employer or your colleagues and be sure that you do not appear to speak on behalf of your institution, unless you are explicitly authorized to do so.⁵



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5. Follow usual disclosure practices regarding conflicts of interest. If you are posting about a device, medication or service for which you receive compensation in any way, FTC requires this disclosure as part of your post.
6. Remember that everything – even “private” posts – should be considered both permanent and public. Use a professional voice, always. When in doubt, wait or seek help before posting something.^{6,7}

Following the above recommendations will safeguard against most problems and open the digital space for professional activity without significant risk. Below are cases that illustrate complexities of social media for health professionals. Of course, state laws vary and therefore these case scenarios are simply examples of how some states may view these cases. They may not apply in all states or circumstances and are not intended to be legal advice.

Case #1: A surgeon texts a patient’s medical information to an anesthesiologist. Since the case is very unique and medically interesting, the anesthesiologist posts a screenshot of the text in a Facebook physician group. Who is liable?

Without the consent of a patient, the anesthesiologist could be held liable for sharing protected health information (PHI) online. There is also no reason that sharing this information online would benefit the patient’s health care, further adding risk of liability.

The surgeon will likely not be liable since he was sharing information for the purpose of providing optimal patient care. However, it is not recommended to use common text messaging services for this purpose.¹ Instead, use a secured physician portal or other hospital-approved method of communication, and consider including this documentation in the medical record.⁸

Case # 2: A physician gives general medical advice online in his blog, but it is not factually correct. A reader follows the advice. He suffers an adverse event and wants to sue the physician.

There are likely no grounds for liability. The patient would need to show a physician-patient relationship for a malpractice claim, and even if the reader was this physician’s patient, if the post does not represent specific medical advice to that particular patient (and might be the case with a “question and answer” forum), it would typically be considered general education instead of medical advice, and the liability risk would be quite low. However, if it were in the context of a specific communication between the two parties, the risk would be higher. This kind of specific communication could occur via a blog comment and reply, or a Facebook post and reply, or even a Twitter tweet and reply. Therefore, it is recommended to avoid giving specific answers to particular medical questions to an

individual in this way and to include a disclaimer that the post is for informational purposes only.³ When posting online, it is helpful to describe conditions, therapies and recommendations in very general terms and to remind readers that each situation is unique, and therefore individuals should seek advice from their own physicians for their particular health issues.

Nevertheless, physicians should take reasonable steps to ensure that any medical info posted online is factual, just as is done during scientific presentations and writing. If inaccurate information leads to harm, the individual may have at least a theoretical basis to claim negligence. It is advisable to include a brief disclaimer on blogs or social media bios to the effect that posts are not medical advice and are not guaranteed to be accurate.³ (Note that this kind of disclaimer accompanies almost any medical textbook as well, because the practice of medicine and state of literature changes rapidly, and human error cannot be entirely avoided.)

Case #3: A physician posts very generic details about a case online, and a patient thinks it is about them, but it was not. Patient wants to sue.

There are no grounds for suit without a reasonable identifiable connection between the posted “case” and the patient. It is always necessary to avoid using patient identifiable information online. Even if specific patient information is not disclosed, it is possible that a combination of public news broadcasts and the physician’s geography combined with timing and details of the

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post may make patients potentially identifiable. Fictionalized cases are preferable for discussion of the core issues. In addition, adding a time interval between the actual case and the fictionalized case presented for educational or illustrative purposes is desirable.

Case #4: A patient records a doctor's conversation and posts the recording on YouTube. The physician does not say anything inappropriate but did not give permission for the recording.

Individual states have different laws regarding consent for recording conversations. Some require permission from both parties. Regardless of consent laws, it is generally thought that recording (audio/video) of a patient-physician encounter is disruptive to the confidential physician-patient relationship. For this reason, many institutions prohibit patients from recording, or at a minimum, require consent from all parties involved.

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Case # 5: Similar to #4, parents record their child's anesthetic induction with a smartphone camera and post it online. Physicians and staff were also seen in the video.

Similar to #4, unless the hospital has a policy in place and makes this restriction known to the parents, no liability exists for simply videotaping the induction. If the video was somehow edited to suggest a false course of medical care in a negligence claim against the physician, liability could potentially befall on the parents. Whether the parents' posting of their child's medical information violates patient privacy is unclear, as long as the child is of minor age. This probably becomes most relevant when the child is of older age and would ethically be deserving of assent (though perhaps not legal consent).

Case #6: A patient posts her medical story online and identifies her treating physicians by name. None of the physicians were asked for permission, and one of the physicians did not want to be identified in her medical care.

The patient has the right to publicize their own medical information/care. Medical professionals do not have a right to anonymity. Unless the information posted was false, there is likely no liability (defamation) that could be held against the patient.

Many physicians are concerned about potential risks and liability associated with online activities. These concerns are valid, and sometimes complex, as the cases above illustrate. However, following the best practices outlined at the beginning of this article, as well as understanding institutional policy and relevant state laws, can safeguard clinicians. Patients look to the internet for medical information. If physicians and their expert voices are not found online, we do a disservice to those we intend to serve.

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Sample physician social media sites:

Physician blogs:

edmariano.com
apennedpoint.com
marjoriestieglermd.com
straighttalkmd.com

Physician Twitter sites:

twitter.com/DrDerekOchiai
twitter.com/thedocfrancois
twitter.com/ankeetudani

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