

Social Media Bites Back



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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

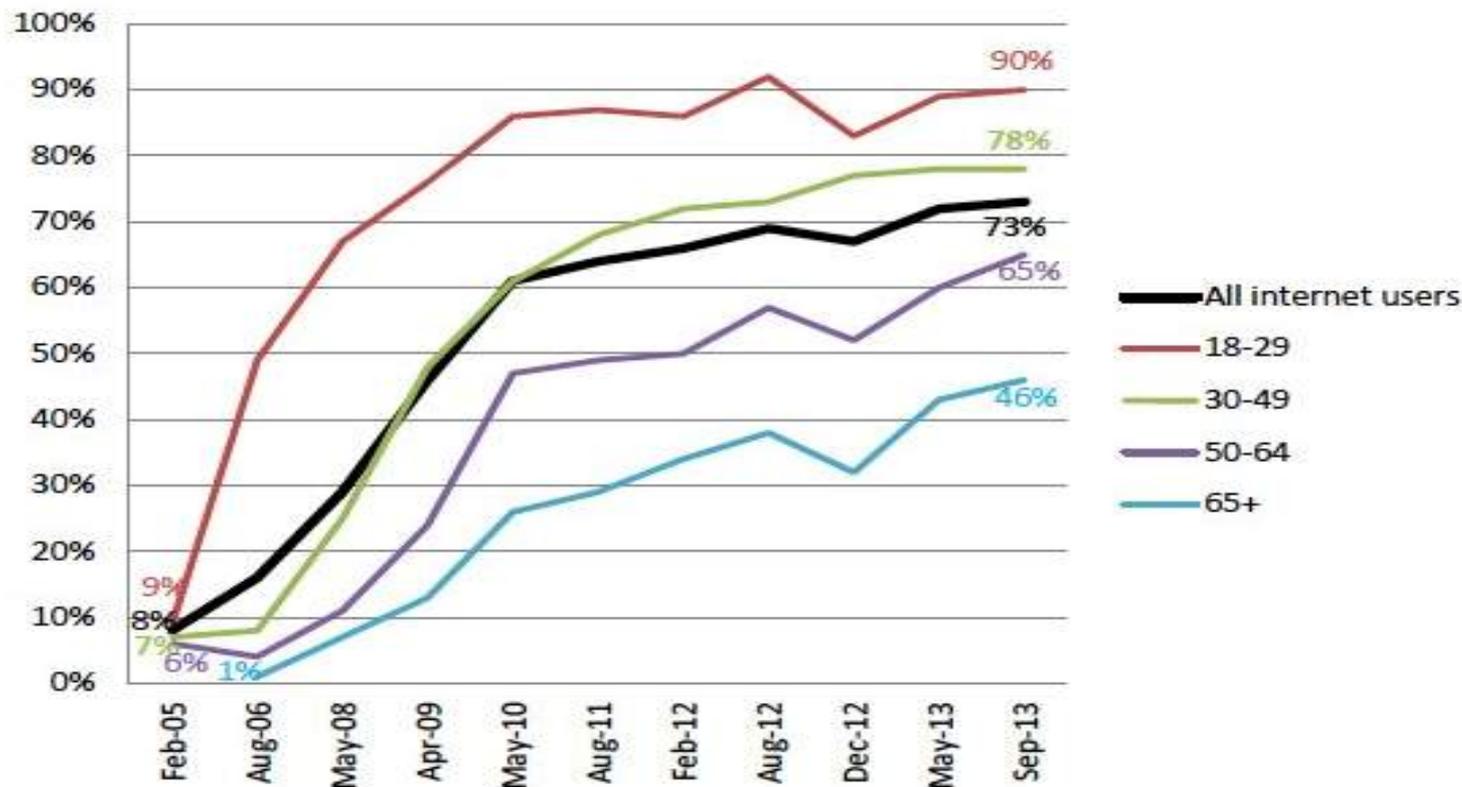
Social Networking Facts

- 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

Social networking site use by age group, 2005-2013

% of internet users in each age group who use social networking sites, over time



Source: Latest data from Pew Research Center's Internet Project Library Survey, July 18 – September 30, 2013. N=5,112 internet users ages 18+. Interviews were conducted in English and Spanish and on landline and cell phones. The margin of error for results based on internet users is +/- 1.6 percentage points.



#SettingThePace2016

Welcome to the New York State Emergency Nurses Association's Annual Conference, Setting The Pace,

This session is titled:	Setting The Pace 2016! Social Media Bites Back
Presented by:	Sue Dill Calloway, MSN, RN, JD

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Who Uses Social Networking Sites

Who uses social networking sites

% of internet users within each group who use social networking sites

<i>All internet users</i>	74%
a Men	72
b Women	76
a 18-29	89 ^{cd}
b 30-49	82 ^{cd}
c 50-64	65 ^d
d 65+	49
a High school grad or less	72
b Some college	78
c College+	73
a Less than \$30,000/yr	79
b \$30,000-\$49,999	73
c \$50,000-\$74,999	70
d \$75,000+	78

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 American Medical Response of CT

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
- Tasker Healthcare Group, d/b/a Skinsmart Dermatology ("Tasker") Case 04-CA-094222 on May 16, 2013

The Test for Concerted Activity

NATIONAL LABOR RELATIONS BOARD

SKINSMART DERMATOLOGY

Case Number: 04-CA-294222 Location: WYNDMOR, PA
Date Filed: 12/04/2012 Region Assigned: Region 04, Philadelphia, Pennsylvania
Status: Closed on 05/09/2013 Reason Closed: Withdrawal Non-adjusted

Docket Activity

Date**	Document	Issued/Filed By
12/05/2012	Initial Letter to Charging Party*	NLRB - GC
12/05/2012	Initial Letter to Charged Party*	NLRB - GC
12/04/2012	Signed Charge Against Employer*	Charging Party

The Docket Activity list does not reflect all actions in this case.

* This document may require redactions before it can be viewed. To obtain a copy, please file a request through our FOIA Branch.

- 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 found six of the seven social media policies 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 her 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

Nurse Sued in Federal Court for Breach

=====
This opinion is uncorrected and subject to revision before
publication in the New York Reports.

No. 224

John Doe,

Appellant,

v.

Guthrie Clinic, Ltd., et al.,

Respondents.



T. Andrew Brown, for appellant.

Martha B. Stolley, for respondents.

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

Federal Trade Commission



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Business Center

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BUSINESS BLOG

Advertising and Marketing

Advertising and Marketing Basics

Under the law, claims in advertisements must be truthful, cannot be deceptive or unfair, and must be evidence-based. For some specialized products or services, additional rules may apply.

Children

If you advertise directly to children or market kid-related products to their parents, it's important to comply with truth-in-advertising standards. (Questions about kids' privacy? Check out the FTC's resources about COPPA, the Children's Online Privacy Protection Act. The FTC also has a special page about food advertising to children and adolescents.)

Endorsements

Do you use endorsements in your marketing? Do they meet the standards of the FTC Act and the FTC's Guides Concerning Use of Endorsements and Testimonials in Advertising (Endorsement Guides)? Find out more by consulting FTC compliance resources.

Environmental Marketing

Companies are offering consumers an ever-growing assortment of "green" options. But whether your environmental claims are about the product or the packaging, you'll need consistent and reliable

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, plaintiff had 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 case at bar employer was aware
- Employers have a duty to monitor and to respond appropriately

Discoverability in a Courtroom

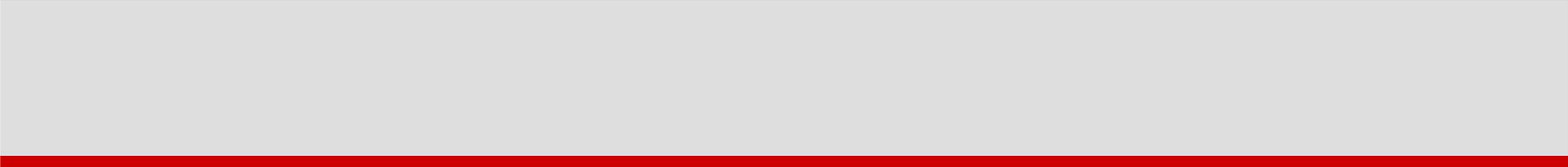
- Also remember that electronic health records, voice mails, chat rooms and blogs and social media posts are discoverable
- This means they can be used in the courtroom if relevant
- It is discoverable despite privacy settings
- Even emails that have been deleted may be retrievable

Social Media Information Can Explain

The image shows a screenshot of the YouTube channel page for "Cancer Treatment Centers of America". At the top, the YouTube logo is on the left, and a search bar, "Upload" button, and "Sign in" button are on the right. Below the channel name, there is a "Subscribe" button with "6,178" subscribers. Navigation tabs for "Home", "Videos", "Playlists", "Channels", "Discussion", and "About" are visible. The main content area features a video titled "What is Prostate Cancer?" with 16,401 views from 4 years ago. The video description identifies Dr. Larry Bans, a urologist at the Cancer Treatment Centers of America at Western Regional Medical Center, and includes a link to the website. Below this, a section titled "Learn More About Cancer and Cancer Treatment Options" displays three video thumbnails: "The Anatomy of Cancer" (5:05), "Cancer Screening Recommendations for Breast a..." (0:43), and "4 Signs of Cancer Men Should Not Ignore -- CTCA Medical ..." (1:01). On the right side, a "Featured Channels" list includes "American Cancer S...", "SU2C", "Stupid Cancer", "Demand Cures Today", "National Cancer Ins...", "Relay For Life", "Susan G. Komen", "Pancreatic Cancer ...", and "NBCCF".

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 patient hit by 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, disciplines, 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 recently 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 it 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 patients, 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



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 pictures 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

Case #4 Food Fight

- 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

Another Picture of Food Fight on Unit



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

HHS.gov

Health Information Privacy

U.S. Department of Health & Human Services



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Filing a Complaint

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- > [Frequently Asked Questions](#)



HIPAA Access Guidance and FAQs

New guidance and FAQs clarify HIPAA's Right to Access requirements.

HIPAA for Individuals

We offer information about your rights under HIPAA and answers to frequently asked questions about the HIPAA Rules.

Filing a HIPAA Complaint

You may file a complaint with OCR if you feel your rights under the HIPAA Rules were violated.

HIPAA for Professionals

Find information about the HIPAA Rules, guidance on compliance, OCR's enforcement activities, frequently asked questions, and more.

www.hhs.gov/hipaa/index.html

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!!!!!!”

Case #6 Nurse Fired For Comments on Boss

- “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

Case #6 Nurse Fired For Comments on Boss

- 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

- American Society of Registered Nurses. Nursing students kicked out for placenta photos. CBS News. January 3, 2011. <http://www.cbsnews.com/stories/2011/01/03/ap/strange/main7208544.shtml>

Case #7 Nurse Holding a Placenta



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
 - Lazzarotti J. Registered nurse fired for Facebook posting while treating patients. Jackson Lewis Workplace Privacy, Data Management, and Security Report. May 18, 2011. <http://www.workplaceprivacyreport.com/2011/05/articles/social-networking-1/registered-nurse-fired-for-facebook-posting-while-treating-patients/>

Hospital Policy on Social Media



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

Hospitals Post Social Media Policy



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Social Media Toolkit

www.mc.vanderbilt.edu/root/vumc.php?site=socialmediatoolkit&doc=26923

Social Media Policy and Toolkit

VUMC Social Media Policy

Considering an official VUMC account

Consultation Form

Links and References

Participation Guidelines

Popular Platforms

Best Practices

Responding to posts

Managing physician online reputation

Medical Center descriptions

Vanderbilt Public Event for Social Media Promotion

Connect with VUMC

VUMC Social Media Policy

The social media policy below applies to personal activity and/or professional activity that is not part of official VUMC communication, and where you identify yourself as a Vanderbilt employee -- for example, through a bio or comments. In these cases, you should include the following language in your bio or account description.

If word count limits allow:

The views and opinions expressed here are not necessarily those of Vanderbilt University Medical Center, and they may not be used for advertising or product endorsement purposes.

For Twitter or other similar platforms with very restrictive word count allowances:

Tweets my own. Or Views my own.

If you do not identify yourself as being affiliated with Vanderbilt University Medical Center, the policy does not apply.

This policy is applicable to all faculty, staff and house staff of the adult enterprise, the pediatric enterprise and behavioral health enterprise.

I. Purpose: To provide guidelines outlining how Vanderbilt University Medical Center (VUMC) supports institutional communication goals through social media platforms.

II. Policy: VUMC offers support of institutional communication goals, as well as provides social computing guidelines for VUMC faculty and staff engaging in online discourse and identifying themselves with VUMC or Vanderbilt University.

This policy is intended for internet activities that associate or identify a VUMC faculty or staff member with Vanderbilt, use Vanderbilt email addresses, or discuss Vanderbilt. In keeping with the Electronic Communications and Information Technology Resources policy (HR-025), Vanderbilt email addresses should not be used in conjunction with unofficial or personal social media accounts and profiles. This policy is not

The Joint Commission and Texting



The Joint Commission Texting Orders

- It is important to keep electronic communication safe
 - The Office of Civil Rights enforces both the HIPAA Privacy and Security
- TJC issued a FAQ or frequently asked questions on April 22, 2015
- It is not acceptable for physicians and other LIPs to text orders to the nurse
- This method provided no ability to identify the person sending it such as keeping the original as validation of what was entered into the chart

Nurses' Guide to Social Media



Nurse's Guide to Social Media White Paper

- 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
- The nurse does not want to lose their license
- This provide guidance to nurses to use electronic media in a manner to protect confidentiality

Nurse's Guide to Social Media White Paper



White Paper: A Nurse's Guide to the Use of Social Media

August 2011

www.ncsbn.org/Social_Media.pdf

Introduction

The use of social media and other electronic communication is increasing exponentially with growing numbers of social media outlets, platforms and applications, including blogs, social networking sites, video sites, and online chat rooms and forums. Nurses often use electronic media both personally and professionally. Instances of inappropriate use of electronic media by nurses have been reported to boards of nursing (BONs) and, in some cases, reported in nursing literature and the media. This document is intended to provide guidance to nurses using electronic media in a manner that maintains patient privacy and confidentiality.

Social media can benefit health care in a variety of ways, including fostering professional connections, promoting timely communication with patients and family members, and educating and informing consumers and health care professionals.

Nurses are increasingly using blogs, forums and social networking sites to share workplace experiences particularly events that have been challenging or emotionally charged. These outlets provide a venue for the nurse to express his or her feelings, and reflect or seek support from friends, colleagues, peers or virtually anyone on the Internet. Journaling and reflective practice have been identified as effective tools in nursing practice. The Internet provides an alternative media for nurses to engage in these helpful activities. Without a sense of caution, however, these understandable needs and potential benefits may result in the nurse disclosing too much information and violating patient privacy and confidentiality.

Health care organizations that utilize electronic and social media typically have policies governing employee use of such media in the workplace. Components of such policies often address personal use of employer computers and equipment, and personal computing during work hours. The policies may address types of websites that may or may not be accessed from employer computers. Health care organizations also maintain careful control of websites maintained by or associated with the organization, limiting what may be posted to the site and by whom.

The employer's policies, however, typically do not address the nurse's use of social media outside of the workplace. It is in this context that the nurse may face potentially serious consequences for inappropriate use of social media.

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 website 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
 - Patient can sue for breach, defamation, invasion of privacy

Nurse's Guide to Social Media White Paper

- Nurse can be fired by employer
- Some nurse have mistaken belief it is acceptable to discuss 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 formal employee. He was disciplined by the BON for discussing confidential information
 - It should not be disclosed to someone no longer caring for the patient

Nurse's Guide to Social Media White Paper

- Nursing student asks 3 year old if she could take his picture and he agrees. She posts 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 student on the pediatric unit
- Hospital notified OCR

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Federation of State Medical Boards

Model Policy Guidelines for Social Media



Federation of State Medical Boards Policy

- Federation of State Medical Boards issues 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

Federation of State Medical Boards Policy

Federation of
STATE
MEDICAL
BOARDS

<http://www.fsmb.org/Media/Default/PDF/FSMB/Advocacy/pub-social-media-guidelines.pdf>

**Model Policy Guidelines for
the Appropriate Use of Social
Media and Social Networking
in Medical Practice**

Federation of State Medical Boards Policy

- Use of social media is increasing and discusses 2011
- 87% of physicians use social media for personal use
- 67% of physicians use 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

Federation of State Medical Boards Policy

- Noted that medical school students and residents have disciplined for posting unprofessional online content
- Physician licensing boards have reported similar instances
- Discusses many of the same issues identified in the AHA 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

Federation of State Medical Boards Policy

- 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

Federation of State Medical Boards Policy

- There must be parity of ethical and professional standards to ensure a proper doctor-pt relationship
- Information contained on the doctors website should be truthful and not misleading or deceptive
- It must be up-to-date and easy for patients to understand
- Document included guidelines for physicians who use social media and social networking
- Discouraged from interacting with current or past patients on social media such as Facebook

Federation of State Medical Boards Policy

- Physicians should only have online interactions with patients when discussing their medical treatment
 - These should never occur on personal social networking or social media website
- Social networking may be useful places for physicians to gather or share experiences
- Such as Doximity with more than 567,000 US physicians and can exchange HIPAA compliant messages
- Should ensure only verified and registered users have access and ensure it is password protected

Federation of State Medical Boards Policy

- Of course, patient privacy must be protected
- Never provide any PHI that could identify a patient
- Use separate personal and professional social networking site
- Report any unprofessional conduct witnessed
- Cyber-bullying toward anyone is unprofessional
- Follow the employer's social media policy
- Do not misrepresent credentials and if occurred can be disciplined by state medical board

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 at sexual misconduct 69%, use of internet for inappropriate use such as prescribing without clinical relationship 63%, and online misrepresentation of credentials 60%,

March 21, 2012, Vol 307, No. 11 >

< Previous Article

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Research Letters | March 21, 2012

Physician Violations of Online Professionalism and Disciplinary Actions: A National Survey of State Medical Boards **FREE**

S. Ryan Greysen, MD, MHS, MA; Katherine C. Chretien, MD; Terry Kind, MD, MPH; Aaron Young, PhD; Cary P. Gross, MD, MPH

[+] Author Affiliations

JAMA. 2012;307(11):1141-1142. doi:10.1001/jama.2012.330.

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Article

Figures

Tables

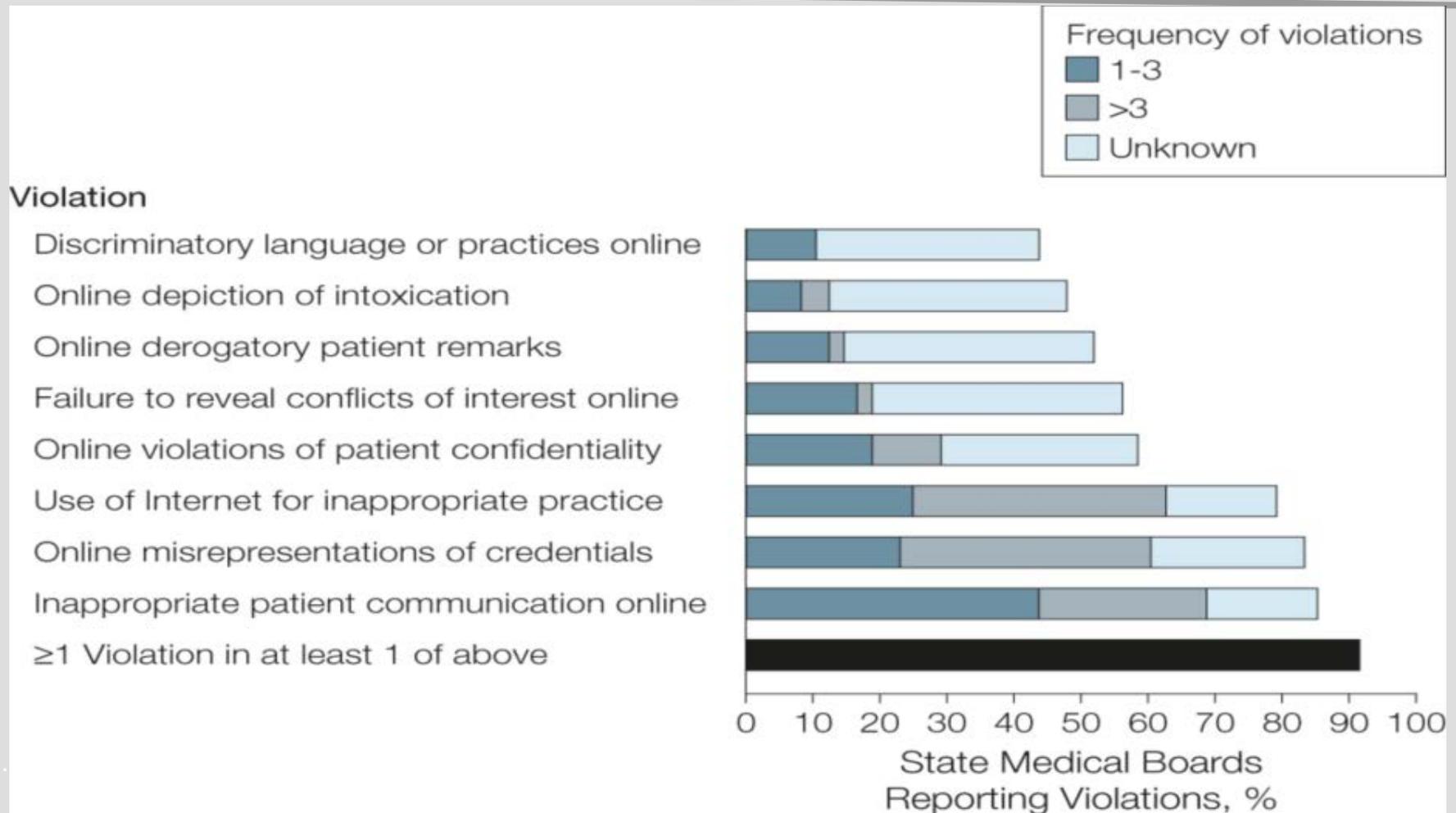
References

To the Editor: The use of social media by physicians to post unprofessional content online has been well documented.^{1,2} While concerns about online professionalism have prompted the creation of guidelines for social media use from professional societies such as the American Medical Association,³ there is no information about oversight by licensing authorities for physician uses of the Internet or disciplinary consequences for violations of online professionalism.

METHODS



Violations Reported to Medical Boards



Resources

- Chretien KC, Azar J, Kind T. Physicians on Twitter. *JAMA*. 2011;305(6):566-568
- Shore R, Halsey J, Shah K, Crigger BJ, Douglas SP. AMA Council on Ethical and Judicial Affairs (CEJA). Report of the AMA Council on Ethical and Judicial Affairs: professionalism in the use of social media. *J Clin Ethics*. 2011;22(2):165-172
 - 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.
- Greysen SR, Kind T, Chretien KC. Online professionalism and the mirror of social media. *J Gen Intern Med*. 2010;25(11):1227-1229
- Lagu T, Greysen SR. Physician, monitor thyself: professionalism and accountability in the use of social media. *J Clin Ethics*. 2011;22(2):187-190
- Morrison J, Wickersham P. Physicians disciplined by a state medical board. *JAMA*. 1998;279(23):1889-1893

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



www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion9124.page

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Resources

[About the Ethics Group](#)[AMA Code of Medical Ethics](#)[▶ Opinion 9.124](#)[History of AMA Ethics](#)[Frequently Asked Questions](#)[Purchase the Code of Medical Ethics](#)[AMA Journal of Ethics](#)[Declaration of Professional Responsibility](#)[Ethics Group Internship Program](#)

Opinion 9.124 - Professionalism in the Use of Social Media

The Internet has created the ability for medical students and physicians to communicate and share information quickly and to reach millions of people easily. Participating in social networking and other similar Internet opportunities can support physicians' personal expression, enable individual physicians to have a professional presence online, foster collegiality and camaraderie within the profession, provide opportunity to widely disseminate public health messages and other health communication. Social networks, blogs, and other forms of communication online also create new challenges to the patient-physician relationship. Physicians should weigh a number of considerations when maintaining a presence online:

(a) Physicians should be cognizant of standards of patient privacy and confidentiality that must be maintained in all environments, including online, and must refrain from posting identifiable patient

AMA Professionalism in Social Media

- Don't post identifiable patient information or PHI
- Monitor the information on their own websites to make sure is accurate and appropriate
- Maintain appropriate boundaries
- Separate personal and professional content
- If see inappropriate content posted by colleagues bring it to their attention or report if they refuse
- Recognize that online actions can affect the 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
- Study by Google found that 86% of physicians use the Internet to

9124a.pdf - Adobe Reader

File Edit View Document Tools Window Help

1 / 7 75% Find

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

<https://download.ama-assn.org/resources/doc/code-medical-ethics/x-pub/9124a.pdf>

CEJA Report 8-I-10

Subject: Professionalism in the Use of Social Media

Presented by: John W. McMahon Sr., MD, Chair

Referred to: Reference Committee on Amendments to Constitution and Bylaws
(Daniel B. Kimball, Jr., MD, Chair)

1 This report by the Council on Ethical and Judicial Affairs (CEJA) was developed in response to
2 Policy D-478.985, "Supporting the Establishment of Guidelines Regarding Online Professionalism,"
3 (AMA Policy Database) which asks our American Medical Association (AMA) to address "online
4 professionalism." D-478.983, "Physicians and Electronic Social Networking," introduced by the
5 Medical Student Section, asks our American Medical Association (AMA) to address "online
6 professionalism." Resolution 6-A-10, introduced by the American Congress of Obstetricians and
7 Gynecologists, similarly asked that AMA study physicians' use of social networking. Though many
8 physicians have been using the Internet for both clinical and social purposes for years, recently
9 concerns have been raised regarding blurred boundaries of the patient-physician relationship and the
10 impact of unprofessional behavior by physicians online to the profession as a whole. In both the
11 news media and medical literature, physicians have noted there are unanswered questions in these
12 areas and that professional self regulation is needed in this area.^{1,2} This report discusses the ethical
13 implications of physicians' nonclinical use of the Internet, including use of social networking sites,
14 blogs, and other means to post content online. It does not address clinical use of the Internet, such as
15 telemedicine, e-prescribing, online clinical consultations, health-related Web sites, use of electronic
16 media for clinical collaboration, and emailing patients (some of which are already covered in the

8.50 x 11.00 in

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 of easy creation and editing of web page
- 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

HHS.gov

Health Information Privacy

U.S. Department of Health & Human Services

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- > [Covered Entities and Business Associates](#)
- > [HIPAA Enforcement Highlights](#)
- > [Frequently Asked Questions](#)



[HIPAA Access Guidance and FAQs](#)

New guidance and FAQs clarify HIPAA's Right to Access requirements.

HIPAA for Individuals

Filing a HIPAA Complaint

HIPAA for Professionals

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 personal interest to 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 their professional relationships
- 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 Aesthesia 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 Media 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



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CAN-SPAM Act: A Compliance Guide for Business

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RELATED RULE: [CAN-SPAM Rule](#)

Do you use email in your business? The CAN-SPAM Act establishes requirements for commercial messages, gives recipients the right to have you stop emailing them, and spells out tough penalties for violations.

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Do you use email in your business? The CAN-SPAM Act, a law that sets the rules for commercial email, establishes requirements for commercial messages, gives recipients the right to have you stop emailing them, and spells out tough penalties for violations.

Despite its name, the CAN-SPAM Act doesn't apply just to bulk email. It covers all commercial messages, which the law defines as "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service," including email that promotes content on commercial websites. The law makes no exception for business-to-business email. That means all email – for example, a message to former customers announcing a new product line – must comply with the law.

Each separate email in violation of the CAN-SPAM Act is subject to penalties of up to \$16,000, so non-compliance can be costly. But following the law isn't complicated. Here's a rundown of CAN-SPAM's main requirements:

1. **Don't use false or misleading header information.** Your "From," "To," "Reply-To," and routing information – including the originating domain name and email address – must be accurate and identify the person or business who initiated the message.
2. **Don't use deceptive subject lines.** The subject line must accurately reflect the content of the message.

The CAN-SPAM Act: A Compliance Guide for Business



www.ftc.gov/system/files/documents/plain-language/bus61-can-spam-act-compliance-guide-business.pdf

Do you use email in your business? The CAN-SPAM Act, a law that sets the rules for commercial email, establishes requirements for commercial messages, gives recipients the right to have you stop emailing them, and spells out tough penalties for violations.

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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 a 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 a 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

FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DEBORAH EHLING,

Plaintiff,

v.

**MONMOUTH-OCEAN HOSPITAL
SERVICE CORP., et al.,**

Defendants.

Civ. No. 2:11-cv-03305 (WJM)

OPINION

WILLIAM J. MARTINI, U.S.D.J.:

Plaintiff Deborah Ehling filed this action against Monmouth-Ocean Hospital Service Corp. (“MONOC”), Vincent Robbins, and Stacy Quagliana (collectively “Defendants”). This matter comes before the Court on Defendants’ motion for summary judgment under Federal Rule of Civil Procedure 56. There was no oral argument. Fed. R. Civ. P. 78(b). For the reasons set forth below, Defendants’ motion for summary judgment is **GRANTED**.

I. BACKGROUND

Plaintiff Deborah Ehling is a registered nurse and paramedic. Defendant MONOC is a non-profit hospital service corporation dedicated to providing emergency medical services to the citizens of the State of New Jersey. Defendant Vincent Robbins is the President and CEO of MONOC. Defendant Stacy Quagliana is the Executive Director of Administration at MONOC.

Stored Communication Act SCA

- She gave her friend access who then provided it to management without any solicitations
 - If hospital has solicited it there 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

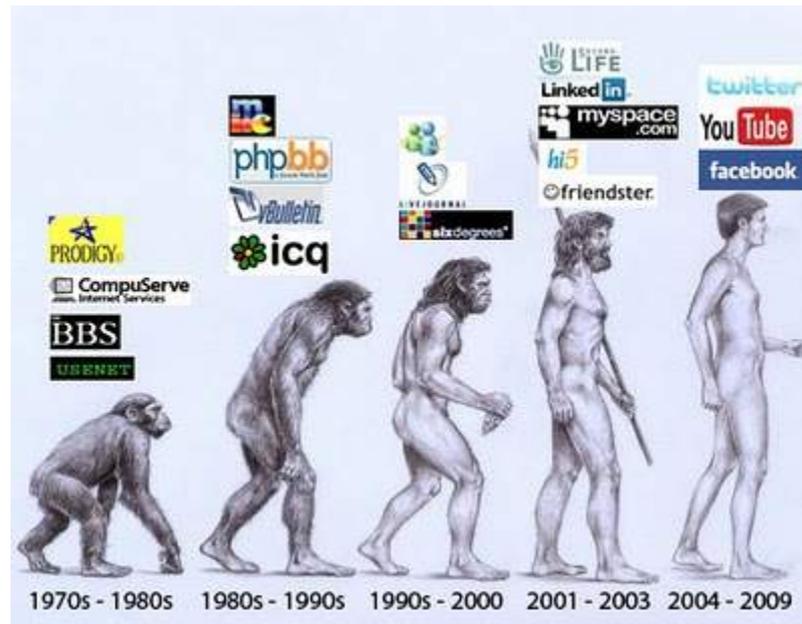
Ehling's Facebook Criticizing EMTs

- 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

Benefits of EHRs

How to Implement EHRs

Privacy & Security

EHR Incentives & Certification

Success Stories & Case Studies

Resource Center

HealthIT.gov > For Providers & Professionals > Privacy & Security > Your Mobile Device and Health Information Privacy and Security

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Privacy & Security

Your Mobile Device and Health Information Privacy and Security



Physicians, health care providers and other health care professionals are using smartphones, laptops and tablets in their work. The U.S. Department of Health and Human Services has gathered these tips and information to help you protect and secure health information patients entrust to you when using mobile devices.



Read and Learn

- How Can You Protect and Secure Health Information When Using a Mobile Device?
- You, Your Organization and Your Mobile Device
- Five Steps Organizations Can Take To Manage Mobile Devices Used By Health Care Providers and Professionals
- Frequently Asked Questions (FAQs)
- Downloadable Materials



Watch and Learn

- Worried About Using a Mobile Device for Work? Here's What To Do!
- Securing Your Mobile Device is Important!
- Dr. Anderson's Office Identifies a Risk
- A Stolen Mobile Device
- Can You Protect Patients' Health Information When Using a Public Wi-Fi Network?



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