

Internet Liability for Gastroenterologists: Select Issues From Social Networking to Doctor Rating Sites

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Roadmap to the **FUTURE** of **PRACTICE**

In this month's "Roadmap," Andrew Feld—MD and JD, discusses the intriguing intersection of social media, the internet, and medicine. He analyzes opportunities and dangers of connectivity. Physicians who utilize social media in their medical practices or private communications must be aware of the power and permanence of electronic "footprints." During this year's Digestive Disease Week® AGA Spring Postgraduate Course, I moderated a session about new and previously unimagined resources that are being developed to monitor patients remotely, enhance our communication, and allow us to "hover" over patients in need of intense physician management. This is a new world that carries awesome power and responsibility but one worth exploring.

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The Internet continues to change the physician-patient relationship. Not only do people perform Internet searches to determine the disease causing their symptoms before they visit the doctor, but 47% of people now perform Internet searches on their own physicians, and 37% of people consult physician rating sites.¹ The information that patients find online can impact their perceptions of physicians as well as the physician's reputation and practice. Therefore, physicians should be aware of what patients may find online and how they can use online resources to protect their reputation. This article outlines what patients may discover about physicians online, the impact of the Internet on a physician's reputation, and best practices for when patients post negative comments online.



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Information About Physicians Available Online

When a patient performs a simple Internet search of a physician's name, the results may include personal and professional contact information; publicly available social media accounts; disciplinary data, if any, reported on a state government Web site; articles written by the physician; and reviews of the physician by patients, insurance companies, and/or the physician's staff. These results are part of the physician's digital footprint. Information contained in the digital footprint will generally have either a positive or negative impact on a physician's reputation and the public's trust in the medical community. Physicians can partially control what information is listed first in response to an Internet search of the physician's name and attempt to mitigate any negative results that are returned. This is accomplished by asking for patient testimonials, ensuring top search results provide the name of the physician and information about his or her practice, performing periodic Internet searches, and maintaining a public and a private profile.

Social Networking

Physicians should be aware of popular social media modalities. The most widely used, and thus important, types of social media are Facebook, Twitter, and LinkedIn. Facebook allows a user to create a profile page with a "wall" on which others can write, link the profile to another user's profile by "friending," and restrict or share access to their information with all of the user's "friends" or even the public at large. Similarly, Twitter is an online social networking site that emphasizes microblogging by allowing a user to post, send, and receive short text messages, up to 140 characters long, that are known as "tweets." Finally, LinkedIn is an online professional network that allows a user to create a profile that lists the user's educational and work background. Users can connect with business acquaintances, network, and privately or publicly search for a job.

There are numerous legal issues that may be implicated when physicians write about their professional work on their social media accounts. These issues include compliance with Health Insurance Portability and Accountability Act (HIPAA), Title VII of Civil Rights Act, Americans with Disability Act, and general common law tort principles. Posting identifiable photos

Abbreviations used in this paper: AMA, American Medical Association; HIPAA, Health Insurance Portability and Accountability Act.

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of patients, placing information about patients in a non-HIPAA-protected manner, and responding to nonpatient inquiries in a manner that may create a duty to that patient are examples of actions that violate HIPAA and are illegal.

The American Medical Association (AMA) cautions physicians that anything written online may exist permanently, even if a user attempts to delete or remove the items from the user's personal page.² The AMA expects physicians to self-monitor by alerting each other to unprofessional comments made by or about a fellow physician. When a physician knowingly refuses to remove unprofessional online comments, the AMA expects physicians to inform the appropriate authorities. Social media modalities can be important tools, but physicians must be cognizant of their legal and ethical obligations when using such tools.

Review Sites

In addition to being aware of social media modalities, physicians should be aware of how patients can rate them online. Web sites such as Healthgrades, Angie's List, and RateMDs generally allow patients to rate physicians in several areas and leave a general comment about their experience. Most sites permit physicians to update their profiles to include basic contact information as well as the physician's qualifications and certifications.

Insurance companies are beginning to provide patient reviews of physicians to their members. For example, Zagat has assisted WellPoint Insurance in creating online reviews of physicians available to WellPoint customers, including Blue Cross plan members.

The quality and frequency of rating are becoming popular areas of research, but very few studies are currently available. Khadry et al¹ reviewed more than 4999 individual online ratings of physicians, and researchers concluded that most patients give favorable online physician reviews. One in 6 of the participating American physicians were rated online by patients. Gao et al³ concluded that a strong correlation exists between online ratings and offline reputation. This conclusion is limited by the fact that "quality" was never defined in the study; the researchers simply suggest that "quality" is a judgment made by patients that is based on factors including physician's bedside manner, timeliness, and communication skills. Notably, the structure of many rating sites would permit persons who are not even patients, but disgruntled acquaintances, contractors, or staff, to submit fictitious reviews. However, reviews may provide important information to the larger community about a patient's experience, and this information can be used to identify weaknesses, like timeliness, in a physician's practice.

Physician-to-Physician Web Sites

Physicians can also network and collaborate with one another on Web sites such as OrthoMind.com and Sermo.com. These sites allow for new forms of collaboration such as informally sharing experiences about the success of new surgical techniques. However, the sites require the same level of care that a physician would use when interacting with fellow colleagues in real life, such as not using patient identifiers to non-treating clinicians.

Text Messaging

A text message is an electronic message, generally up to 160 characters in length, sent between 2 mobile phones. Patients are generally receptive to the idea of texting with their physicians. Patients who use phones paid for by their employers, especially senior management and board members, may be concerned about their employer having access to sensitive health care information. Some physicians believe texting is an ideal form of communication because it permits both patients as well as physicians to respond in an efficient manner when it is most convenient for each party. Some physicians and their offices have begun text messaging patients as a means to remind patients about appointments, and others use it to more closely monitor patients with chronic conditions such as diabetes. Physicians also find it convenient to text sign-out lists to colleagues.

The primary concern for patients, and physicians as well, is ensuring privacy and patient confidentiality when texting. Texting does not provide any way to ensure that only the patient and not someone with access to the phone receives the text message. Physicians who intend to text with patients should work with legal counsel to establish a texting policy that explains how messages will be recorded in a patient's chart, how quickly the physician will respond to texts, the types of concerns that can be dealt with through texting, and a common vocabulary to be used in the texts. Patients who wish to text with physicians should sign a written informed consent acknowledging that they understand the texting policy as well as any privacy risks and texting charges associated with its use before any texting begins. Physicians can best be able to limit the risk of a third party obtaining confidential health information by only using texting to confirm appointments. Private companies may soon develop software that permits a physician and patient to send secure text messages that protect a patient's privacy and confidentiality. At this time, the Joint Commission Frequently Asked Questions on Texting Orders notes that it is not acceptable for MDs to text orders for patients to the hospital because "this method provides no ability to verify the identity (of MD) [and] no way to keep the original message as validation . . ."⁴

Protecting a Physician's Reputation

Physicians should safeguard their professional reputation online because it may impact relationships with patients, staff, and fellow physicians as well as affect physicians' future opportunities and the public's trust in the medical community. Bad reviews, even if completely false, can be detrimental to a physician's reputation. This is especially true if the negative review is the first one listed after an Internet search of the physician's name. Nonetheless, a physician still has substantial control over his or her reputation as described below.

Provide Quality Patient Care

First and foremost, physicians can best protect their reputations by providing—and ensuring that their staff who interact with patients are providing—excellent patient care. Physicians and their staff should strive to make patients feel welcome and respected by actively listening to the patients' concerns.

Understand How to Achieve Positive Top Internet Search Results

To create a positive reputation online, a physician should seek to ensure that top results returned from an Internet search of that physician's name contain positive or neutral information. Ideally, the top results should be the physician's practice's home page, the physician's professional home page, the physician's online curriculum vitae, and neutral or positive reviews of the physician. The importance of having positive top results is illustrated by a recent study that shows that the top listed site in response to a Google search was clicked on 36.4% of the time, the second listed site was clicked on 12.5% of the time, and the third listed Web site was clicked on 9.5% of the time. The first site receives as much "traffic" as the second, third, fourth, and fifth sites combined. Thus, a physician should make concerted efforts to have the top Internet search results for the physician's name return a positive result. Alternatively, physicians can hire reputation companies to help move positive sites to higher listed result positions and negative sites to lower listed result positions.

A physician can increase the likelihood of having a positive result listed as the first result in Internet search engines by purchasing the domain name, if available, that contains the physician's name. For example, Dr John Smith should buy the domain name drjohnsmith.com. This strategic purchase prevents the domain name from being purchased by another person who could use it to post negative information about the physician.

Patient Testimonials

Positive patient testimonials, such as patient reviews posted online, can greatly affect a physician's reputation. However, translating positive patient comments into online testimonials is tricky business. If a patient expresses a positive experience and the physician asks the patient to review the physician online and mention the positive experience, the patient may or may not be willing to comply with that suggestion or feel comfortable refusing. Alternatively, a physician may ask the patient whether the comment could be included as a testimonial on the practice's Web site. If the patient agrees, then a release form should be filled out that includes the patient's comment verbatim. The patient should be allowed to check the comment for accuracy before signing this release. Although some literature recommends seeking testimonials, the senior author of this article does not.

Physicians should never ask staff members to create false positive patient testimonials because this can create serious legal liability.⁵ Instead, employees who wish to provide positive comments about a physician on the practice's Web site or elsewhere should publicly identify themselves as the physician's employees.

Periodic Internet Searches

A physician should perform at least monthly Internet searches for the physician's name, the physician's practice's name, and the names of all staff members who interact with patients. Alternatively, a physician can simply enter these search terms into www.google.com/alerts, and Google will e-mail a list of the best results, including Web sites, news articles, and blog

entries, in response to a query for the designated search terms. Both approaches allow a physician to know what patients see when they perform a simple Internet search for the physician's name. It is important to quickly identify negative sites and/or reviews to mitigate their impact on a physician's reputation.

Become a Dual Citizen Online and Create an Office Online Policy

A physician also should become a dual citizen online by creating both a public, professional identity and a private, personal identity. The public identity would include a physician's practice's Web site, professional Web site, a LinkedIn account, a professional Facebook public figure profile, the physician's practice's Facebook page, the physician's curriculum vitae, published articles, and any reviews by patients, staff, and colleagues. These aspects of the professional identity should be readily available through an Internet search.

In sharp contrast, the physician's personal identity would contain the physician's personal Facebook and Twitter accounts in addition to other personal information. A physician should use privacy settings to prevent the general public, including patients, from accessing the physician's personal information available on personal social media accounts. A physician should not connect with patients through the physician's personal social media accounts or allow patients to access the physician's personal information that is available online. Physicians' personal Facebook accounts ideally would not show up as a result in an Internet search, and physicians with personal Twitter accounts should use anonymous names.

If a patient somehow finds a physician's personal social media profiles and seeks to connect with the physician through those personal profiles, the physician should reply with prewritten standard language explaining that the physician ethically may not connect with patients in their personal capacity through social media.

In addition, physicians should maintain official social media policies for his or her practice because these policies are essential to physicians maintaining a dual identity and appropriately engaging with social media. A practice ideally would seek legal counsel to assist in drafting a social media policy to ensure compliance with all pertinent laws, especially HIPAA, and general common law and medical principles of confidentiality. Pediatric physician practices must also structure their professional and practice's social media accounts to restrict posting privileges to persons older than 13 years to comply with the Children's Online Privacy Protection Act. A physician should also determine whether the practice's insurance covers social media claims and, if not, consider adding such coverage.

Best Practices When a Patient Posts a Negative Comment Online

When a patient posts a negative comment online, physicians should never respond publicly. A physician could breach his or her HIPAA obligations and perhaps other legal duties by publicly refuting a negative review online.

A physician should also reflect before immediately suing a patient for his or her negative online comments. A lawsuit for defamation of character is often costly and difficult to win. A physician is also unlikely to win a suit against a Web site for

defamation because these sites are generally immune from such suits under federal law. Most importantly, suing a patient for nasty comments online often has a greater negative impact on the physician's reputation in the community, because the negative comments and underlying reason for them receive a great deal of attention in the community.

Rather than replying online, a physician who receives negative comments should instead attempt to identify which patient posted the negative comment. After identifying the patient, a physician could review the patient's chart and discuss the patient's care with staff to determine whether any of the patient's allegations are true. A physician should contact legal counsel before reaching out to the patient. Anecdotal evidence suggests that the best solution may be to meet with the patient and seek to resolve his or her concerns. If legal counsel agrees, the physician should reach out to the patient immediately to demonstrate respect for the patient's opinion and a genuine desire to respond to the patient's concerns.

Physicians could also determine whether the Web site on which the patient posted the negative comments has removal standards for comments. If applicable, a physician could request that the negative post be removed. This approach is rarely successful. Web sites have no obligations to check the veracity of negative reviews and are almost never held liable for defamatory comments made by private parties. The Web sites have no reason to stifle negative comments; indeed, these negative comments may make the Web site's overall rating or review of a physician appear more balanced and thus credible.

Summary and Conclusion

Physicians should actively monitor their personal or professional information that patients can access online because this information can affect patients' opinions. The Inter-

net can be used as a tool to inform patients and the community about a physician's qualifications, certification, and background as well as reviews by current patients. Negative reviews can quickly surface and injure a physician's reputation. Thus, physicians should remain vigilant in monitoring all aspects of their online reputation.

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Conflicts of interest

The authors disclose no conflicts.