

# **Social Media and the Health Care Worker:**

**Questions and Practical Solutions**

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# Why should I care about social media?

- Patients use social media, so doctors and clinics need to as well
  - Social media is the new “word of mouth”
- Employees use social media, and their conduct can affect the workplace
  - Managers and supervisors need to know how to handle this without creating legal liability

# Today's agenda

- Facebook firing do's and don'ts
- Employee and patient privacy rights
- Social Media in hiring
- Protecting your brand online

# Facebook firings

## The big question ...

I can fire my employee for his Facebook post, right?



# Is the post protected activity?

- NLRA Section 7
  - Employees have the right to discuss the terms and conditions of their employment
    - Construed broadly
  - Applies to both union and nonunion workforces

# Is the post protected activity?

- Whistleblower laws
- Civil Rights laws
- Privacy Laws
- FMLA/ADA



# Example – post protected

- American Medical Response
  - Employee: *“Looks like I’m getting some time off. Love how the company allows a 17 [AMR code for a psychiatric patient] to be a supervisor.”*
  - Coworker: *“What happened?”*
  - Employee: *“Frank being a dick.” ... “Yep he’s a scumbag as usual.”*
  - Coworker: *“Chin up!”*

# Example – post not protected

- Martin House, Inc.
  - Employee: *Spooky is overnight, third floor, alone in a mental institution, btw Im not a client, not yet anyway.*

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- Employee: *My dear client ms 1 is cracking up at my post, I don't know if shes laughing at me, with me or at her voices, not that it matters, good to laugh*



# Example – post not protected

- SkinSmart Dermatology
  - Employee: *My supervisors “are full of sh\*\* . . . They seem to be staying away from me, you know I don’t bite my [tongue] anymore, F\*\*\* . . . FIRE ME . . . Make my day . . . .”*

# Example – post not protected

- Lineberry v. Richards
  - Registered nurse terminated after posting pictures of herself on vacation engaging in activities she claimed she could not perform
    - She was on FMLA leave during the vacation
  - Termination not unlawful

# Practical takeaway

- Is the post protected?
  - NLRA
    - Is the employee a supervisor?
    - Does the post relate to terms and conditions of employment?
    - Is the employee Facebook friends with any co-workers?
    - Did co-workers respond to the post with encouragement, or a call to action?
- Does the post justify termination?

# Employee privacy rights

- I think one of my employees is violating the clinic's social media policy, I can monitor his/her social media activity, right?



# Employee privacy rights

- Public information is fair game
- Private information may raise issues under state and federal privacy laws
- What does your social media policy say?
  - Is the employee on notice that monitoring may occur?

# Example – nonpublic information

- Lazette v. Kulmatycki
  - Supervisor read 48,000 of former employee's personal emails
  - Employee sued for violation of federal Stored Communications Act and invasion of privacy
    - Case survived motion to dismiss, then settled

# Example – nonpublic information

- Ehling v. Monmouth-Ocean Hospital Service Corp.
  - RN posts to private Facebook wall

*“An 88 yr old sociopath ... opened fire in the ... DC Holocaust Museum ... 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!!!!”*

- RN fired over the post
  - No Stored Communications Act violation because co-worker voluntarily provided copy of post to management.

# Practical takeaway

- Ensure appropriate policy language to permit monitoring
- Use publicly available information wherever possible
- Don't pose as someone else or coerce anyone
- Supervisors should avoid friending supervisees



# Patient privacy rights

- I love my job, I can post about it, right?
  - Or ... I hate my job, I'm going to post about it whether you like it or not!
- My patients want to know more about me, I can friend them, right?
- If I don't say who the patient is, I can post a photo of them, right?

# Patient privacy rights

- Sharing patient information can result in legal liability
  - HIPAA
  - State privacy laws
  - State medical laws

# Example



## White Coat Notes

News from the Boston-area medical community

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## R.I. doctor fired over Facebook posts

Posted by Chelsea Conaboy April 19, 2011 07:09 PM

[E-mail](#) | [Print](#) | [Comments \(0\)](#)

By **Chelsea Conaboy, Globe Staff**

A physician from Rhode Island could have used a few of [those tips from Bradley H. Crotty](#) about how to behave online.

Dr. Alexandra Thran wrote about her experiences in Westerly Hospital's emergency department. She didn't use names, but the hospital and the [Rhode Island medical board](#) [decided](#) she included enough that patients could be identified.

See tomorrow's *Globe* for the full story.

### About White Coat Notes



White Coat Notes covers the latest from the health care industry, hospitals, doctors offices, labs, insurers, and the corridors of government. Chelsea Conaboy previously covered health care for The Philadelphia Inquirer. Write her at [cconaboy@boston.com](mailto:cconaboy@boston.com). Follow her on Twitter: [@cconaboy](https://twitter.com/cconaboy).

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## SPRINGTIME DEAL AT A VINEYARD GREAT



# Examples

- ER Nurses and staff posted photograph of stabbing victim instead of treating him
- Student nurse posted photo of 3 year old chemotherapy patient and wrote about how brave the patient was
- Student nurse posted photo of herself with human placenta

# Practical takeaway

- Make sure your social media policy says
  - Don't discuss patients
  - Don't post any PHI (including photos)
  - Don't friend patients
- Focus social media on professional networking and education

# Social media in hiring

- I can decide not to hire someone based on what I found on their social media sites, right?



# Social media in hiring

- Screening applicants based on social media content implicates numerous state and federal laws
  - State and federal civil rights laws
  - Fair Credit Reporting Act (and state equivalent)
  - State lawful consumable products laws
  - State social media password legislation

# Civil rights concerns

- TMI
  - Protected class information
    - age, race, national origin, religion, sex, disability, etc.
- Risk of claim for failure to hire





# Fair Credit Reporting Act

- FCRA
  - Third-party aggregator
  - Notice and consent requirements
- Social Intelligence Corp.
  - “It is photos and videos that seem to get most people in trouble. ...we see a lot of illegal activity.” [NY Times: Social Media History Becomes a New Job Hurdle]

# Lawful Consumable Products

- Minnesota and many other states prohibit employers from refusing to hire an applicant (or from discharging an employee) for the use of lawful consumable products off premises and during nonworking hours
  - E.g., tobacco, alcohol

# Social media password legislation

- Many states restrict or prohibit employers from requiring individuals to provide user names and passwords to personal social media accounts

# Practical takeaway

- Implement a social media screening strategy and be consistent
- Develop a plan that addresses
  - Who's doing the searching?
  - What are you looking for?
  - Where/how are you searching?
  - When are you searching?

# Protecting your brand online

- A former employee has anonymously posted false and misleading information about our facility/clinic on Glassdoor.com and Yelp
  - What can we do?
  - Should we respond?
  - Will Glassdoor.com take down the post?

# Protecting your brand online

- You have the right to respond to a negative online post
  - Does the post contain HIPAA-protected information, or other sensitive/confidential information?
  - Is the post believable – that is, will it really hurt your company?
  - Many sites won't take down posts
- Defamation claims are hard to win

# Example

- *Dietz Development LLC v. Perez*
  - Dietz filed defamation lawsuit against customer, Perez, for online statements
  - Perez filed counterclaims against Dietz claiming Dietz's online responses were defamatory
  - Jury ruled both parties had defamed the other
  - Awarded no damages to either party

# Glassdoor

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## Reviews Guidelines

Millions of job seekers rely on Glassdoor's reviews and other user-submitted content to find jobs and companies they love. Please follow these guidelines to ensure everyone can benefit from a helpful, balanced, and authentic community.

- **Tell it like it is... for real** — We approve reviews and interview details that offer insights that can only come from an employee or job candidate who's been there within the past five years. Please only submit one company review or interview review per employer per year.
- **Stay balanced** — We believe there's something positive about every workplace, and that even the companies considered Best Places to Work have something they can improve upon. So, we invite you to think about work from a few perspectives and include both a pro and a con to provide a balanced review.
- **Take the high road** — We encourage a healthy and constructive discussion about the workplace. We don't accept reviews that include malicious personal attacks (by name, title, or association).

We do allow comments about individuals who represent the public face of the company if they have great influence over the broad work environment (CEO, C-Suite, President, Owner, etc.) and the comments are related to their behavior in the work environment. We believe this information is generally representative of the company and informative to job seekers. (Franchise Owners, Vice- Presidents, and others are not considered a part of this group.)

- **Stay calm** — We realize talking about work can get some people wound up, but we don't approve reviews that include certain profanities, or any obscenities, aggressive, or discriminatory language that we consider unacceptable for our community. We will reject reviews that include accusations of, or threats of, violence. (General discussions of workplace misconduct are allowed.)



# Responding

## Myth #1: Isn't Glassdoor just a rant site?

Reality: No, in fact 70% of employees say they are “OK” or “Satisfied” with their job and company. The average company rating is 3.4 (on a scale of 1-5). We encourage our members to be balanced in their approach – reviews must include insights about the best reasons to work for their employer as well as perspective on anything that could be improved.

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## Myth #2: Anybody can post anything they want.

Reality: Glassdoor's Community Guidelines set parameters on what is acceptable and what constitutes activity that may cause a contribution to be removed. The guidelines encourage members to provide reviews that are constructive and balanced, keep company confidential information confidential, and are respectful of others. All reviews go through a multi-tier review process that includes both a technology-based review as well as human review. About 10% of reviews are rejected by our content services team. Any Glassdoor member can flag a review for a second look by clicking the “Problem with this review” link.

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# Practical Takeaway

- Determine whether a response is really warranted (i.e., will the post truly hurt your business)
  - If yes, write a neutral response
  - Ask the review site to remove the post
  - Seek legal counsel about the viability of a defamation claim, and have legal counsel write to the former employee demanding the post be removed

# Practical Takeaway

- Take action to positively increase your company's online brand
  - Create a Google+ Account
  - Maintain positive Facebook or LinkedIn pages
- Do not try to prevent non-supervisory employees from posting online about your company

# Questions?



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