



PRF NEWS

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Covering Practice and Risk Management Issues for Health Professionals

A Surgeon's Personal Experience with PRF

The following article was written by a PRF Insured for the benefit of other Insureds:

As a young surgeon I never really expected to be named in a real lawsuit. Like many of you, I did well in high school and college and got into a top notch medical school. Coming out of residency in my 30s, I assumed that if I were diligent, ethical, and hardworking, everything would work out great. For the most part, this has been true, but a few years ago I learned the painful lesson that I cannot control everything, and that bad things can happen to even the best of us.

One day while I was seeing patients in my office I got a phone call. Looking back, I don't even remember who the call was from. The caller informed me that a patient that I had operated on the previous week had presented to another institution with a post-op complication. As I thought back to the case, I recalled it as having been entirely uneventful. The patient had been discharged the day after surgery, and I had called the patient at home a few days later to make sure everything was all right. I hadn't given the case a second thought. Nothing unusual had happened.

Yet there I was, on the phone in the middle of a busy day, trying to recall if there was something I could have missed during the surgery. Even after I reviewed the case with my partners and concluded that there was nothing that could have been done to predict this outcome, I was still left with an unsatisfied curiosity of what could have happened. It was also unsettling to experience the conflicting emotions of sadness for the patient with whom I had previously established a good relationship while beginning to notice a sense of foreboding about the potential of being sued.

The initial support

Within hours of receiving the news of my patient's bad outcome, I contacted the PRF office and told them what happened. I provided all the details of the case and the postoperative period that I could. The PRF staff was familiar with this preliminary information gathering and made me feel more comfortable by reassuring me of their support down the road if a lawsuit should arise. Looking back, this initial step was very important. It helped me recall the details of the case when everything was still fresh in my mind. The PRF staff coached me through the process of writing everything down and submitting it to them.

One of the first questions PRF had for me was if the patient had signed an arbitration agreement. Luckily the answer was yes. My practice has policies and procedures in place and my staff is trained to ensure all patients sign one. Although I realize that arbitration agreements are not bullet proof, the fact that we had followed PRF's recommendations would prove to help a great deal in the proceedings that would come later.

PRF also told me that legal proceedings can take a long time to get started and can take a long time to get resolved. They advised that there is a lot of waiting and uncertainty. And ultimately, after many months, a lawsuit was filed.

Physician leadership

PRF invited me to meet with several of the physicians who participate in PRF's management in order to discuss the case. It reassured me that the physicians involved in the group have decades of experience to share, and many have been defendants in lawsuits of their own. In the discussions that followed I came to see that lawsuits are very common and that bad outcomes can happen to any physician.

Compassionate and competent representation

I was soon appointed a lawyer. The lawyer had been defending physicians in malpractice cases for many years and knew the plaintiff's lawyer well. I learned that having representation that is familiar with the opposing counsel can be very useful in gaining insight into the potential legal strategies that were to follow. It certainly helped in my case.

My lawyer gathered information from me, my staff, and my medical records. I was surprised at the depth and detail of data collection. One important lesson I learned during this process concerned medical record keep-

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The Medical-Legal Pitfalls of Social Media (And How To Avoid Them . . .)

BY AYLIN COOK

Businesses in every sector are taking advantage of social media platforms to get the word out about their products and services, attract new customers, and engage existing clients. The medical industry is no exception, with private practices and large hospitals alike creating Facebook pages, Twitter and Instagram accounts, and YouTube channels to interact with patients online.

While social media can certainly be an effective tool to expand the relationship between patients and their physicians, it's important to recognize that social media also brings significant risks for medical professionals.

The following are just a few of the most common potential medical-legal risks and pitfalls that come with the use of social media.

It's easy to inadvertently cross the appropriate boundaries between physician and patient.

While social media can be a powerful tool that allows physicians to build a stronger con-

nection with patients, it's easy for things to get out of hand. After all, just how *personal* should these connections be?

There are few official guidelines on whether physicians should accept "friend" requests or similar connections on social media, but the consensus is that it is best to keep strong patient-physician boundaries.

According to a 2011 QuantiaMD study of 4,000 physicians, 35 percent of physicians using social media reported that they had received a "friend" request from a patient or a family member of a patient. Of those, 58 percent reported that they always rejected them.

Several potential problems can arise from accepting "friend" requests from patients, particularly those with whom you do not necessarily have a friendship outside of the office. By providing patients with access to your personal social media accounts, you open yourself up to scrutiny.

Patients may begin to second guess your professionalism based on how they see you behave outside of the office. They may draw unwarranted conclusions about you and your

practice. Your posts could cause significant embarrassment to you, and, worst case scenario, it could even lead to the patient suing the practice. Plus, granting patients broader access to your social media profiles also provides a potential opportunity for patients to discover something confidential about another patient.

In the end, it's best to play it safe.

Consider these tips:

- ▶ Rather than becoming "friends" with patients on social media sites, invite them to become "fans" or "followers" of your practice's Facebook page if it has one. This compromise provides the benefit of connecting with patients without granting them direct access to personal or privileged information.
- ▶ Create and enforce social media guidelines for yourself and your staff to keep things professional and appropriate, as well as to maintain patients' privacy.

Assume that everything will go public.

When you are dealing with digital infor-

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A SURGEON'S PERSONAL EXPERIENCE WITH PRF

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ing. Electronic medical records stamp the date and time a record is signed. Unfortunately for me, a record that documented follow up communication with the patient was either created or signed after the outcome and therefore was of little or no use. Had I created or signed that record sooner, it would have made a big difference in my case. I now document all patient communication and medical details as well as sign records as promptly as possible.

Another factor that made me feel that I was in good hands was my lawyer's knowledge and understanding of the complexities of medical practice. My attorney was so familiar with all the medical terminology used that I had to explain very little. My lawyer understood all the medical opinions, reports, and arguments involved and knew how to use them to help our case.

My attorney also helped to prepare me for the long journey to come. As a defendant in a lawsuit, it is important to brace yourself for many phone calls, conferences, depositions, fact finding and exploration, research, and unpredictability. I spent many hours poring over the hospital chart, reviewing the expert opinions, and preparing for the arbitration. None of it was pleasant. During this process, the lawyer helped me find my voice and gave me invaluable advice for how to conduct myself during the various proceedings. I soon learned that lawsuits are marathons—not sprints—and they are conducted in the midst of busy clinical practices, 15 hour work days, and the usual stress of everyday life. Having a good legal team gave me the confidence to move forward even when the proceedings became stressful and difficult.

The case was finally settled a year and a half after the lawsuit was filed. We were ulti-

mately pleased with the settlement, and I understand that the other party was as well.

Why PRF is different

To be honest, before all this I did not give much thought to my malpractice carrier because I never thought I would need them. I suspect that many new members are just like me. It was only through working with the organization during my time of need that I realized how important their support can be. I have benefitted from the competent representation, the compassionate staff, and the knowledgeable physician leadership. I am now aware that lawsuits are almost an inevitability and am better prepared should another one ever arise. Hopefully, sharing this experience can help other physicians recognize that PRF advice is given to help prevent lawsuits—but if one occurs, they will be with you all the way. ■

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mation, nothing ever truly “goes away.” The minute you type or record something, it becomes very simple to replicate it and create copies. Even with the best security practices, the pictures, videos, and comments you share with your colleagues find a way of reaching others outside of that circle of confidence.

Before you post anything, stop and think about what might happen if it were to become public. If you don't have permission to be sharing that information, or if it could lead to embarrassment down the line, then chances are it shouldn't be sent or posted.

Everything you post is up for grabs.

If you find yourself involved in a malpractice suit, you should realize that more than your professional data could be on the line. In many states, social media posts are considered to be a part of the public domain.

For instance, if you have a smartphone that you use for both business and personal purposes, then everything on it—not just the information that's pertinent to the case—is available to the plaintiff's attorney.

Plaintiff attorneys can use that information in a case against you, to prove wrongdoing, or even to discredit you as a medical professional. Your online posts can lay traps in your testimony or show that you are irresponsible in general. Any discrepancy between your social media posts and your testimony becomes a liability. Therefore:

- ▶ Be VERY careful about anything you post online, whether on your personal profile or on your medical practice's page. Remember that once anything hits the Internet it can no longer be considered “private.” Some malpractice insurers require that physicians maintain two separate cell phones, using one strictly for business purposes and restricting the other to personal use.

Social media sites do not use HIPAA-compliant security.

While many social media sites will assure you that your information is “secure,” that won't protect you in the event of a lawsuit. HIPAA requires specific standards in the networks that contain patient information, and inadvertently posting private information about a patient's health will violate those standards, even if the audience is restricted. For that reason:

- ▶ Do not use social media to respond to clinical questions from your patients or to discuss patient cases with colleagues.

As a rule, avoid dispensing medical advice or practicing medicine via social media.

Remember that “identifying information” includes more than you might suspect!

HIPAA restricts the sharing of any identifying information in conjunction with any medical details. It may be tempting to make a vague post about something that happened at

medical situation. This may be an unusual case or something as simple as a photo of a smiling patient after a successful dental procedure. In any event, don't make assumptions when it comes to your patients' privacy; always get written permission from the patient beforehand.

If you are already involved in a medical malpractice case, don't remove previous posts or information.

“Should you find yourself in the middle of a medical malpractice case, it may be tempting to go through your social media accounts and clean them up by removing posts that could hurt your case. This is a bad idea.”

work one day, but realize that the term “identifying information” may encompass more than you initially thought. The HIPAA website lists 18 criteria of identifying information that, if shared, could land you in some serious trouble.

Create and enforce a social media policy at your medical practice.

An ounce of prevention is worth a pound of cure in your social media standards. Lay out exactly what is and is not appropriate for physicians and staff members. While the rules regarding what can and cannot be posted are slightly less stringent for members of your staff than they are for physicians, maintaining similar rules for staff members will simplify matters and reduce extra liability.

Maintain strong privacy settings on both your personal and business accounts.

Keeping strong privacy settings on your online accounts will help to maintain the separation of your personal affairs from your business affairs online. Some patients are naturally curious and will search for whatever information is available; there's no telling what they could find offensive. A private account will reduce the risk that they will find something they don't feel comfortable with, no matter how benignly it was intended.

If you intend to post something about a patient or their medical situation, get written permission.

In spite of these warnings, there may come a time when you decide it is important to post something regarding a specific patient or their

Should you find yourself in the middle of a medical malpractice case, it may be tempting to go through your social media accounts and clean them up by removing posts that could hurt your case. This is a bad idea. Even if you delete these posts, they don't actually “go away”—there will be a record of them somewhere. Meanwhile, you are responsible for preserving evidence relevant to your case, and deleting posts could be seen as tampering with evidence—which is illegal.

Conclusion: Don't be frightened . . . be careful.

After all of these warnings, you might want to just walk away from social media altogether and avoid any possible trouble, but to do so would be an overreaction. Hospitals, clinics, and private practices should use social networks to engage patients, attract new patients, and post educational information. Just be cautious, think through every post, and if you're delegating social media marketing to a staff member, oversee the results. ■

Aylin Cook is the senior content marketing manager at PatientPop, an all-in-one practice growth platform for health care providers. Aylin has nearly a decade of experience in content marketing for small businesses and enjoys building and engaging an audience through compelling storytelling across multiple media channels.

Protecting Your Practice's Electronic Security

BY DEBRA PHAIRAS

It is increasingly obvious that current electronic medical record (EMR) systems may not utilize security measures adequately to protect patient protected health information (PHI). Whether due to cost, complexity, or lack of awareness, the implementation of robust security protections is not always given the priority that it deserves. As a result, criminal cyberattacks on health care organizations have become the Number 1 cause of health care data breaches.

Follow these tips to help maintain electronic security for your practice. The instructions at the end of this article will help if you believe your cyber security has been compromised.

1. Use the free online tools available at www.qualys.com to conduct a cyber risk assessment.
2. Run the free online HIPAA risk assessment tool at <https://www.healthit.gov/providers-professionals/security-risk-assessment-tool>
3. Ask these questions of your data management partners:
 - Are you HIPAA (patient privacy act) compliant?
 - Are you HITECH (EMR adoption and meaningful use act) compliant?
 - Are you ISO (international standards for safe, reliable technology) certified?
 - What precautions have you taken to secure my patients' information?
4. Purchase encryption software recommended by your software or EMR vendor. Anti-virus software is not enough.

5. Require all staff members to use multi-factor authentication requirements and robust passwords (NOT "12345"!). Make it a requirement for staff members to change all of their office passwords every quarter.
6. Educate the staff on how to identify suspicious and potentially dangerous email attachments.
7. When patients request copies of their medical records, a staff member should either make a paper copy of the records or copy the records onto an office flash drive and provide that to the patient. Do not allow patients to bring in flash drives to copy their records.
8. Do not allow staff members to take laptops or patient charts out of the office.
9. Instruct staff members not to leave tablets or laptops in a room alone with a patient.
10. Do not dispose of old computers without wiping the hard drive to destroy all data.
11. Back up data and either store the backup hard drives away from the office in a secure facility or backup to a secure cloud-based system.
12. Do not allow sales people to access patient data. Have them use their own computers to demonstrate their software. HIPAA regulations require any outside person accessing PHI to sign a Business Associate Agreement.
13. Document all of the requirements set forth in items 5 through 12 above, along with all other office policies pertain-

ing to patient privacy, and provide a copy to each staff member. Have each staff member sign a copy of the policy acknowledging that he or she has read, received, and understood the policy. Retain the signed document in each staff member's file.

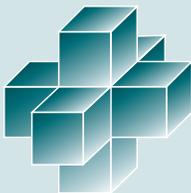
14. Hold regular training meetings to educate staff members on patient privacy as well as office policies pertaining to patient privacy. Document these meetings and the staff members in attendance.
15. Make sure your practice fully complies with HIPAA regulations. If you are unsure what is required by HIPAA, go to www.hhs.gov/hipaa/for-professionals/ for an overview and links to the specific regulations. You can also subscribe to the CMA/PrivaPlan HIPAA Privacy and Security Compliance Online Toolkit at www.privaplan.com. CMA offers the toolkit at a discount to its members.

If you have a security breach:

1. Determine if PHI was compromised.
2. Call PRF to notify them of the breach. You will be asked to fill out a PRF Plus management report and you will be advised of your legal obligations, which may include:
 - Contacting the affected patients by certified letter. This must be done within 60 days of discovery of the breach, and there are specific requirements as to what needs to be divulged to the patient.
 - Notifying the Department of Health and Human Services.

You may also be advised to first call the affected patient(s) by phone to explain the situation and apologize. PRF has always recognized the importance of a sincere and heartfelt apology when there is an adverse event. At this time, you can also offer credit monitoring services. This is an inexpensive way to show that you are trying to win back the patient(s)' trust. Your PRF Plus coverage covers all notification and monitoring expenses up to your coverage limits. ■

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