

Staying Well Within the Law

A newsletter on the current legal issues facing today's health care industry

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Should Your Practice Institute an Employee Social Network Policy?

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The proliferation of social networking through the use of blogs, interactive chat rooms and popular online web sites such as Twitter, LinkedIn and Facebook present enormous marketing opportunities for a physician's practice. It is easier than ever to monitor a competitor, communicate with patients and colleagues and advertise services. Social media sites, however, also present new risks, especially in the medical field where employees are privy to confidential patient information and employers must carefully navigate patient privacy issues.

The risks of using social media has taken front stage in the now infamous case of *Essent PRMC, L.P. v. John Does*. In *Essent*, Paris Regional Medical Center has filed suit against 10 anonymous bloggers in Texas who posted disparaging information about the center on a web site. The center alleges that the bloggers are current or previous employees who breached their employment agreements by releasing confidential patient information in violation of HIPAA (Health Insurance Portability and Accountability Act) laws. The case is currently pending in a Texas trial court after an appellate court refused to order the Internet service provider to reveal the names of the bloggers.

More recently, a nursing student was dismissed from her nursing program after posting comments on her MySpace page



that described in critical and graphic detail the labor of an obstetric patient. A federal district court in *Yoder v. University of Louisville* ordered her reinstated after determining that she did not divulge information meeting the definition of "confidential" in her agreement with the school or technically violate the school's Honor Code.

In light of these examples, physicians should have in place an employee social media policy. All employees should be reminded to act professionally and comply with all applicable practice policies when engaging in social networking. While an employer must recognize the risks associated with the use of social media, it should also strike a balance with an employee's right to express themselves and communicate online.

Any social media policy should address the following issues. First and foremost, employees must be made aware that anything they post on the Internet is public, whether the employee is identifying him or herself as affiliated with the practice or whether the employee is posting socially. An employee has no privacy right in information he or she chooses to place in the public domain. This includes embarrassing photographs, videos or diary entries.

All employment contracts should specifically hold an employee liable for what he or she posts on the Internet whether made during or after work hours. If the employee is not engaging in company-supported social networking, then he or she should never use an

employer-provided e-mail address or the employer's logo or trademarks. An employee should also never discuss patients, competitors, fellow employees or pharmaceutical vendors of the practice. If an employee maintains a blog, the blog should contain a disclaimer stating that any opinion is that of the employee and not of the practice. Because of the less formal atmosphere of social media, all employees must be reminded of their obligations to maintain the confidentiality of any information obtained as a result of the employee's association with the practice. Any agreement should also affirm an employee's understanding and adherence to HIPAA laws and regulations.

Monitoring compliance with a social media policy can be difficult, but with applications like "Google Alerts," an employer can arrange updates that will help in notifying it if negative or disparaging comments are made about the employer online. Without proper policies in place, a physician's practice makes itself vulnerable to proprietary information breaches, negative publicity and harassment lawsuits, among other risks. A capable attorney can assist an employer in drafting a comprehensive social media policy that will safeguard the physician practice from employee misconduct on the Internet.

For more information about this topic, please contact Todd A. Rodriguez at 610.458.4978 or trodriguez@foxrothschild.com or Eleanor Vaida Gerhard at 215.918.3642 or egerhards@foxrothschild.com.

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