SOCIAL MEDIA AND RESPONDING TO PATIENT COMPLAINTS

Internet and social media sites, such as Facebook or provider rating sites, present both opportunities and challenges for the medical profession. A patient utilizing these internet sites can broadcast information to a very large audience, with a degree of permanence that a conversation or office visit does not. Given the potential impact that this information may have, practices should engage in active monitoring of their online presence so they are aware of what information is being posted on social media sites, blogs and patient review sites.

This section of the toolkit discusses what practices should do if they discover a patient complaint posted on the Internet and the challenges they may encounter when dealing with patient complaints online.

The Risk Management Department receives many questions regarding online patient postings. What follows is a list of the most common questions received. The responses were developed in conjunction with the law firm of Whitmeyer Tuffin PLLC.
SECTION 1: HOW SHOULD I RESPOND?

WHILE USING THE INTERNET, I DISCOVERED THAT A PATIENT HAS POSTED SOMETHING NEGATIVE ABOUT ME (OR MY PRACTICE) ONLINE. HOW SHOULD I RESPOND?

• Your first thought may be to post a response to the complaint online in order to “set the record straight,” but this course of action may have negative legal consequences for you or your practice. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other privacy laws strictly limit the dissemination of personal health information and thus restrict what a covered entity can say publicly about a patient. Note that it is not difficult to run afoul of HIPAA and posting even a general response to the complaint could create trouble for you. Something as simple as a response that acknowledges that a patient is, in fact, a patient may violate privacy laws.

  » Any statements made by you in an online forum in response to the complaint are obvious evidence in any legal claim made by the complainant. “Removing” or “deleting” the post may not be as easy, or effective, as it appears. While the post may no longer appear on the website, the information probably could be recovered and used in a legal claim against you or your practice.

  » Generally, website hosting companies and service providers are protected by federal statutes from being liable for content posted by end users. Therefore, while you may not like the post and want it removed from the website, typically, you will not have any recourse against hosting companies and service providers.

• Your next thought may be to determine who made the posting and try to contact the person directly. However, unlike complaints that are made to you directly by a patient, many complaints made online are anonymous. Indeed, it is likely that you’ll discover one of the following scenarios:

  » The individual remains anonymous in the online posting and the practice cannot discern who the individual is.

  » The individual remains anonymous in the online posting, but, due to the details posted, the practice can determine the identity of the individual.

  » The individual identifies himself/herself in the online posting.
Note: You should be cautious about contacting an individual who has made a point to remain anonymous, even if you are able to discern the individual’s identity. The individual’s feelings toward your practice may become even more negative if he or she feels that their desire for anonymity and privacy has not been respected.

Now you may be concerned about the potential impact the posted complaint could have on you or your practice. Consider the following:

» How accurate or truthful is the posting? Information found online can range from being essentially truthful (“I waited for one hour before seeing the doctor,” which may be true if the practice was handling an unexpected emergency that day) to outright false (“I know for a fact that Dr. “X” is not a real doctor and the certificate on his wall is fake…”) or anywhere between the two extremes. Information that is blatantly false may warrant a different course of action than information that is essentially true, even if certain important details are omitted.

» How widely read is the forum in which the posting was found? Is the forum a reputable source? When determining the potential impact of the posting, you should examine the forum itself, as websites, blogs and review sites vary immensely in terms of both popularity and credibility and the effect of a posting on a sparsely-read, startup blog may be quite different than a posting on a very popular, physician review website.

» Does the posting implicate potential legal liability? It is also important to understand what type of complaint the individual is posting and whether there may be any legal liability associated with or implied in the posting. The posting may be fairly benign (“Dr. “X” seemed to be in a hurry and I felt rushed during my visit”) or may have legal implications (“Dr. “X” incorrectly performed a critical procedure that any other practitioner would have correctly performed.”) Understanding the type of complaint will help you identify the best course of action.

» Does the posting violate the stated terms and policies of the website or social networking site? Most websites have policies that prohibit a user from posting information that personally attacks or threatens another individual. If the information posted violates the website’s policies, the website may take action to remove the posting.
SECTION 2: IS THERE ANYTHING I CAN DO?

I UNDERSTAND THE RISKS OF POSTING A RESPONSE ONLINE AND REALIZE THAT IT MAY NOT BE THE BEST IDEA. BUT, WHAT SHOULD I DO?

• Unfortunately, there is no single answer that will accommodate each possible scenario, as each situation is unique and should be evaluated on a case-by-case basis. However, when you discover an online complaint, the following guidelines will assist you with determining the best course of action:

  » Generally, as noted above, you should not use the web platform to respond to online patient complaints. As discussed throughout this section, the risk of breaching obligations of confidentiality and patient privacy and the potential for legal liability is too great.

• If the complaint is relatively benign, the best thing to do is simply ignore the post. As mentioned above, the risks of responding frequently outweigh the benefits. Also mentioned are the pros and cons of attempting to identify the individual who wrote the post. Once again, caution should be taken when deciding whether to contact an individual who has made a point to remain anonymous, even if you are able to discern the individual’s identity. The individual’s feelings toward your practice may become even more negative if he or she feels that their desire for anonymity and privacy has not been respected.

  » However, if you are able to determine who made the complaint online and do not feel, based on your previous interaction with and knowledge of the individual and/or the nature of the posting, that he or she would be offended by or opposed to direct contact, the practice should consider contacting the individual directly to address the complaint. The HEARD protocol information provided in this toolkit can assist you with this process.

• If the comment is of a nature that suggests that a malpractice or other claim against the practice is likely, then you should contact Medical Mutual for guidance. Refer to the Support from Medical Mutual document in this toolkit.
• If the comment is a blatant lie about you or your practice and is the type of defamatory comment that would injure one’s reputation, you may wish to consult competent legal counsel to determine if a claim can be made against the individual. The Internet is no different than a book or a magazine in that one person is not allowed to defame another using this media. When a patient posts/writes a false statement of fact online that damages your reputation, this is called “libel” and any such comments may be the basis of a legal claim against the individual. Please note however that the patient may assert “counterclaims” and also try to prove that his or her statements are true, and that opening the door to the courthouse is not always a wise approach.

• If the comment is a threat to the safety of you, your staff or your family, you should contact law enforcement immediately to report the threat. Any threats of this nature should be taken seriously and immediate action is imperative. You should create a hard copy of any such posting and retain it for your records.

Medical Mutual has, in some instances, advised practices on responding to online reviews and comments with a generic statement. The purpose of the statement is to simply explain privacy rules and your practice’s policy on receiving complaints.

This statement should not, under any circumstances, confirm the person posting the comment as a former or current patient of the practice. The statement is only in response to your practice being identified in the comment.

Below is an example of the type of response that could be used in this situation:

“[Insert practice name] is proud to have been providing comprehensive and compassionate care in the community since [add year established] and takes treatment of its patients – and their privacy – seriously. Because federal privacy laws govern patients’ protected health information, it is not the policy of [Insert practice name] to substantively respond to negative reviews on “ratings” websites, even if they provide misleading, unfair or inaccurate information. We welcome all of our patients and their families to address any concerns or requests for information about their care with us directly as we strive to continue to provide individualized and excellent care in our community.”
SECTION 3: WHAT CAN BE DONE TO PREVENT THIS TYPE OF POSTING?

FIGURING OUT HOW TO RESPOND TO ONLINE COMPLAINTS IS CHALLENGING. IS THERE ANYTHING THAT I CAN DO TO HELP PREVENT SOMEONE FROM POSTING NEGATIVE INFORMATION ABOUT ME ONLINE?

- Given the challenges associated with responding to an online complaint, it may be best to consider taking preventive steps to limit negative postings about you and your practice. Often, people resort to posting negative comments online if they feel they do not have an alternate forum for expressing their complaints or concerns. Establish a culture that provides multiple avenues for patients to express their complaints and concerns directly to the practice. Therefore, the individual may be less likely to resort to online commentary.

- Some examples of preventive measures that you may wish to consider include the following:
  
  » Educate patients about your practice’s desire to hear about their complaints. Refer to the Encouraging Patients to Complain document in this toolkit.
  
  » Administer a separate Patient Satisfaction Survey. Medical Mutual has developed a Patient Satisfaction Toolkit that is available on our website.
SECTION 4: ARE THERE ANY RESOURCES TO ASSIST WITH MONITORING ONLINE POSTINGS?

CONSIDER USE OF RESOURCES SUCH AS MEDICAL JUSTICE (WWW.MEDICALJUSTICE.COM)

- Medical Justice is a membership-based organization that offers services designed to protect physicians’ practice and reputation, including access to contract templates that are designed to limit patient’s ability to post negative comments about physicians in an online setting.

Note: Medical Mutual does not endorse the use of Medical Justice and has no affiliation with Medical Justice.