



Social Media and HIPAA

9 TIPS to Stay Compliant



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Even though Facebook began barely over a decade ago, it and other forms of social media have become tremendously popular. In fact, social media has become a favored tool of communication for personal, business and professional use. We now see the general public using Facebook, Twitter, LinkedIn, blogs and their competitors or successors to obtain their news, receive recommendations, maintain their relationships and drive their business. Medical professionals who wish to gain broader access to patients and the general public are looking for ways to utilize these tools for everything from marketing to patient education. However, in the medical context, these tools are often misused and subject employers to liability for violation of HIPAA data privacy and security regulations.

Employers that are covered entities under HIPAA (including dentists and management groups) face direct liability for the acts of their employees and affiliates that run afoul of HIPAA. At least since HIPAA's Privacy Rule was issued in 2002, there are severe penalties for using or disclosing individually identifiable health information, without written authorization. Groups must always be mindful of how they are treating the personal, financial or medical information that could be used to identify the person or the fact that he or she is a patient (such information under HIPAA is called "Protected Health Information" or "PHI"). When delving into the world of social media, dentists, dental practices, DSOs, and all employees need to be aware of the best practices and the pitfalls of using social media to protect against unintended distribution of PHI.

1 All organizations should establish a social media policy. This includes giving your employees, independent contractors, consultants and patients your organization's guidelines about what social media can and cannot be used, both personally and professionally. Company policies should include HIPAA guidelines and give examples of the kinds of statements that would run afoul of HIPAA. For example, posting on a patient's Facebook page, "It was great to see you for your procedure today! – from Dr. Pat" can be problematic.

2 Companies should regularly monitor social media sites, in addition to privacy and security settings. All employees should acknowledge receiving and reading the company's social media policies.

3 Photos are also subject to HIPAA regulations. Patient photos should not be posted or disclosed to the public without proper written patient authorization, including photos taken in dental offices or at social events.

4 Except for certain types of marketing (see tip #8), companies should communicate directly with patients on social media very rarely. Generic reminders to patients regarding public health recommendations or information is acceptable. For example, a statement on Twitter encouraging followers to contact the dental office for routine cleanings or refills would be permitted. In addition, companies may comment or distribute information promoting health in general as long as it does not promote a company's specific services or product. Referrals to other providers are also permitted as long as the referring professional does not receive compensation for such referral.

5 Information to be communicated with patients or other providers containing PHI should only be conveyed via secure portals with data encryption. Data posted to popular third-party sites, such as Facebook and Twitter, whether shown to the public or via private message, may ultimately result in security breaches and potential liability under HIPAA.

6 Writing about patients on social media, including blogs, without consent should be avoided (do not forget Dr. Pat's posting!). Companies can omit or change key patient details and avoid description of rare medical problems, but it is often easy for patients to identify themselves, even when changing these details, and may result in penalties and liability. So if you plan on using case studies to prove a point or underscore a message, make it a priority to disguise the actual patient as much as possible.

7 If asked for medical advice from someone who is not a patient over the internet, in whatever form, any personalized response may imply the creation of a physician-patient relationship. This is true, regardless of whether a suitably lawyerly disclaimer is used. Our advice is to not answer the question, but to send a response that the dentist does not answer questions via social media and supply office contact information in case the person would like to make an appointment. In addition, contact information for emergency services should be given if the person cannot wait for regular business hours.

8 Although HIPAA does allow general advertising and brochures to be distributed via social media, all marketing materials should be reviewed and screened for strict adherence to HIPAA regulations.

9 Dental practices may disclose protected health information to marketing companies or other consultants if the dental practice and the marketing company/consultant executes Business Associate Agreements.

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