

Legal Risks: Social Media & Privacy in Senior Living Facilities

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Provided by



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Disclosures

The planners have no financial relationships related to this educational activity.

Instructions

To obtain a certificate of earned contact hours for this continuing education activity:

1. View the entire program.
2. Take the post-test. If you pass, you will be able to print your certificate of earned contact hours and an answer key. If you fail, you have the option of taking the test again. The passing grade is 70%.
3. Complete the evaluation form.

Purpose

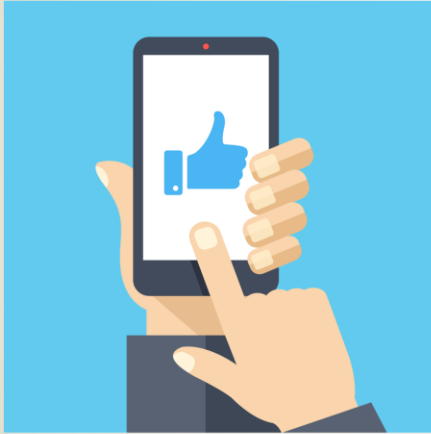
To provide senior managers in senior living facilities with information about the importance of maintaining professional behavior and boundaries with residents, their families and the institution.

Learning Objectives

After viewing this presentation and taking the post-test, you should be able to:

1. Identify appropriate and inappropriate behaviors related to social media and client information.
2. Explain reporting procedures for potential or actual misuse of social media in senior living facilities.
3. Identify the consequences of social media use to residents and to senior living facilities.

Introduction



Netiquette - polite and acceptable online behaviors

- ☞ Where to post
- ☞ How often to post
- ☞ What content to post¹
- ☞ Web sites to avoid posting any content

People who own smart phones become dependent on them for information exchanges within a social network that includes friends, colleagues and a multitude of informational feeds. Some people have a need to post regular updates from their daily life, at times with great frequency. There are many ways to share information with the world about everyday activities. It is important to know when to share and what to share in both a professional and personal setting.

Social Media Definitions

Text - short messages between fixed line or mobile devices

Blog - share content with others

Podcasts - audio

Social Networking web sites - personal profiles; topic specific information sharing

Media sharing platforms - share images, video and sound files

Business Networking sites - professional information shared

Twitter - website where users post and interact with messages²

Wiki - website that users can modify

Instagram - website that allows users to post and share photographs

Snapchat - website wherein users can post, share their photographs and make modifications to the content

The Internet and the World Wide Web provide many vehicles of communication. Professional websites, like LinkedIn, are networking tools where people post work related information about themselves. Most Web users are familiar with Facebook, YouTube, Pinterest and Twitter, which are often used more for personal communication than professional interaction. Blogs and Skype provide asynchronous and real time communication between people. Instagram and Snapchat are phone based social media platforms that are often used to share pictures and videos with the world. Instagram can be viewed at any time, but Snapchat posts last about 10 seconds upon viewing, and then are erased immediately. Instagram allows people to share photos with other members of that social network platform. They can set their profile to a public or private setting.

Social Media Use in Healthcare

Internet based information sharing

- ☞ Text
- ☞ Audio
- ☞ Video
- ☞ Images

Dissemination of information

Communication with family and friends

- ☞ Email
- ☞ Live chat with video³



Social Media can be defined as phone and internet based sharing of information in the form of text, photos, videos, audio files and images. Social networking serves as a communication tool for professionals to share knowledge related to their craft. However, it can also be a vehicle for disseminating personal information. Professionals can use social networking to communicate with both peers and patients. Patients can use online resources to communicate with others for support and to compile information related to a specific disorder. Most social networking sites have a private communication feature, but most posts on social media are open to the public. Long term residents and their families may use social media tools to research health care facilities and to support online advocacy campaigns. Professionals who share private patient information on social media can be charged with legal action.

Social Media Use in Healthcare

- ⌚ Managing interactions between providers and patients
- ⌚ Marketing
- ⌚ Analytics
- ⌚ E-patients
- ⌚ Promote wellness
- ⌚ Professional communication
- ⌚ Consumer information
- ⌚ Clinical trials
- ⌚ Recruitment⁴
- ⌚ Information Dissemination



Social Media is used as tool to facilitate optimal health. Residents and their families use social media to search and communicate with potential senior living communities facilities. Most institutions have a marketing website with descriptions of the facility. Online reviews often use Likert style ratings from people who are familiar with the residence. Further research into the quality of a facility might be found in blogs or review sites that describe the physical plant and resident satisfaction. A bad review can discourage people from choosing a facility. YouTube videos featuring residents or staff can foster a positive image for a senior living communities. However, if negative media is posted in relation to a facility, the institution and its employees can suffer drastic consequences.

Guidelines for Social Media Use

- Professional guidelines⁵
- Institutional guidelines⁶
- Ethical considerations⁷



Many professions offer guides for appropriate social media use. Employers sometimes neglect to add these guidelines into their policies. How employees use their personal electronic devices and social media profiles seems to fall outside the realm of the workplace. However, when information from the workplace is shared on social media, it can reflect on the reputation of the institution. Policies should clearly identify the ramifications for violating resident confidentiality. Consequences include employee termination and even legal action. All health care professionals have an obligation to protect patient information and should not post any form of media online without proper permissions. A simple Facebook post stating “My patient refused her Ativan today” could be traced back to a particular patient. In addition, employees should be cautioned not to post derogatory remarks about their colleagues. This promotes an unsafe workplace for others.

Challenges in Healthcare

- ⌚ Ethics
- ⌚ Privacy
- ⌚ Confidentiality
- ⌚ HIPAA and HITECH
- ⌚ Security⁸



The Health Insurance Portability and Accountability Act (HIPAA) requires all health care providers to secure a resident's permission before sharing their private information with others. That includes sharing any form of media on any social networking site. In addition to this regulation there is the ethical responsibility of the care giver. Since many residents suffer from cognitive impairments, it is the role of the caregiver to be an advocate for the resident and protect their privacy at all times. Caregivers post private information about residents without malicious intent but the violation of patient privacy can be cause for disciplinary action and possibly termination and potential liability to both the facility and the caregiver.

Poor Use of Social Media



Personal information accessed by the public reflects character which can impact the image of an employee's workplace⁹

A person demonstrates the impression they want others to see on their Internet profile^{10, 11}

Unprofessional content that is displayed on social media sites like Facebook, Instagram and Snapchat affects an individual's reputation. Consequently, it can also reflect on the reputation of the individual's employer. There have been instances when surgical residents were at risk for disciplinary action or dismissal for posting personal activities on social media. In the professional world, high risk online activities include postings of healthcare professionals in an intoxicated state, inappropriate photographs, and identifiable patient information. When content is posted it should be clearly stated that the content has been generated by a specific individual and does not represent the views of their professional affiliations.

Social Media Controls

- Residents
- Technology use
- Information sharing
- Internet predators communicating with residents



Social Media controls need to be made clear to staff and residents. Staff need to be aware of which residents are active social media users. They must remind residents that public posts could have an impact on the safety of other residents and staff, as well as the organization's reputation. Many residents and employees post or share content and use online communication tools without malicious intent. However, visual cues and other factors can lead to public identification of the institution even if the name is not part of the post. These posts can compromise HIPAA regulations and resident confidentiality.

Review Question

(Please click on the correct answer.)

The violation of patient privacy can be considered all of the following except

- a. cause for disciplinary action.
- b. possible termination.
- c. liability to the facility.
- d. an act of caring.

Risk Based Social Media Strategy



- ☞ Consistent with organizational goals and objectives
- ☞ Protects organization's reputation
- ☞ Policies and procedures
- ☞ Minimize legal risks
- ☞ Safeguard confidentiality
- ☞ Minimize potential liability from inappropriate posting
- ☞ Proactively monitor social media for compliance^{12,13}

The Centers for Medicare & Medicaid Services review nursing homes to ensure that there are policies in place that prevent staff from breaching confidentiality with social media communications. Institutional strategy should include comprehensive policies and adequate training for staff that are consistent with organizational goals and objectives. Many institutions have used Internet tools as a way of ranking the care and quality they provide to residents. The public rankings of caregivers affiliated with health care facilities can also impact the overall reputation of the facility. Caregivers should be careful to behave publicly in a way that reflects well on their employer.

Additionally, there is risk related to the use of social media to communicate directly with residents and their families. For example, one visiting nurse shared updates with family via an Internet communication tool that was not secure. The outcome was a leak of information about the patient to lay people uninvolved in the case. Remember to consider what the residents are posting online.

Case Studies

Reports in newspapers

Postings

↳ Snapchat

↳ Instagram

↳ Facebook

Actions to prevent these posts¹⁴



Local and national newspapers frequently report on inappropriate use of social media in healthcare. For example, in Florida, a worker posted a video of two residents engaged in sexual activity without their permission. The age of the resident and the name of the facility were stated in the newspaper article. The worker was arrested and lost her job. Reporters investigated the facility and found that the facility had fines for improperly trained staff and other malpractice occurrences. In another state, a worker posted images of a resident covered in feces. Images like these are more common than they should be. These incidents are a poor reflection on the institution, cause residents to leave, and potentially cause a facility to close.

Case Studies

YouTube videos of patients posted with out their permission

Hidden cameras with video posted on social media sites of poor care and with the name of the facility in the video

News story about son who is concerned about his mother's treatment in the nursing home^{15,16,17}



One video of a senior living facility resident labeled “jerk” was removed and the YouTube account associated with the video was terminated. Social media sites like Facebook and YouTube try to manage inappropriate content and the users responsible for posting it. BBC Panorama demonstrated abuse in senior living communities by placing hidden cameras in resident rooms. One man posted a video with commentary about the care of his mother in a senior living community. His frustration with the lack of care and concern, abuse and inappropriate behavior is verbalized in a video corresponding to the hidden camera footage aired as a part of a news commentary. The frustrated family member used social media to call attention to the facility after the problem employees were defended by their union and returned to work. Once the public is aware of a social media posting that has gone viral, the damage from that content is often irreversible, even if the posting is patently false.

Employees and Social Media

- ↳ Personality
- ↳ Frustration level
- ↳ Workplace stress
- ↳ Anger management
- ↳ Respect¹⁸



Social media sites have become a primary channel of communication for people. Social media plays a crucial yet delicate role in the health field. Social media can also pose unintended consequences for both employees and residents in a senior living community. For employees working in a care home, respecting privacy is of the utmost importance when dealing with vulnerable residents. Employees must understand that sharing private information about residents on social media can pose devastating consequences.

Social media posts are public to all and have the potential to go viral. A study on social media campaigns show that both positive and negative emotional appeals in messages tend to increase the chances of those posts going viral. For instance, employees should be cautious of posting text or images of colleagues or themselves in compromising situations, or any situation that can evoke strong emotional reactions. Employees sharing any information on social media about residents could result in both the employee's termination and the resident's decision to leave the care facility.

Employees and Social Media

- ⌚ Therapeutic relationships
- ⌚ Professional boundaries
- ⌚ Behavior on social media ^{18,19,20}
- ⌚ Confidentiality



Therapeutic relationships are the foundation of nursing care. In a senior living community, therapeutic relationships are defined as a range of professional behavior that extends the continuum of helpfulness. Therapeutic relationships help protect the needs of residents by caring for them physically and emotionally. As the role of social media grows in the healthcare profession, employees must consider ways to advocate for patients through platforms such as Facebook, Twitter, and/or Instagram. Conversely, employees should be careful of violating professional boundaries.

Social media has the potential to be a positive channel of communication. Healthcare professionals can use social media as a platform to advocate on behalf of specific issues, such as research on certain disease or health care policy. This type of behavior works to put resident's needs first. However, if employees choose to share private information about residents, they are breaching confidentiality and put themselves at risk for disciplinary action.

Resources

The National Consumer Voice for Quality Long-Term Care

Website: <http://theconsumervoice.org>

The Consumer Voice

1001 Connecticut Avenue, NW, Suite 425

Washington, DC 20036

202.332.2275 (phone) / 866.230.9789 (fax)

info@theconsumervoice.org (email)

American Bar Association Commission on Law and Aging:

Website: http://www.americanbar.org/groups/law_aging.html

1050 Connecticut Ave. NW, Suite 400

Washington, DC 20036

202.662.8690 (phone) / 202.662.8698 (fax)

aging@americanbar.org (email)

References

1. Price, C. (2015). Netiquette: Points for social media users and bloggers. The Huffington Post. Retrieved on March 1, 2017 from: http://www.huffingtonpost.com/courtney-price/netiquette-pointers-for-social-media-users-and-bloggers_b_7786356.html
2. Leonardi, P., Huysman, M. and Steinfield, C. (2013). Enterprise social media: definition, history, and prospects for the study of social technologies in organizations, *Journal of computer-mediated communication*. 19; 1-19.
3. Ventola, C. (2014). Social media and health care professionals: Benefits, risks, and best practices, *Pharmacy and Therapeutics*. 39(7); 491-499.
4. Hamm, M., Chisholm, A., Shulhan, J., Milne, A., Scott, S., Given, L. and Hartling, L. (2013) Social media use among patients and caregivers: a scoping review, *BMJ Open*, retrieved on March 1, 2017 from <http://bmjopen.bmj.com/content/3/5/e002819>.

References

5. National Council of State Board of Nursing (2017). A Nurse's Guide to the use of social media. Retrieved on March 3, 2017 from:
https://www.ncsbn.org/NCSBN_SocialMedia.pdf.
6. Pillow, M., Hopson, L., Bond, M., Cabrera, D., Patterson, L., Pearson, D., Harsh, S., Ankel, F., Fernandez-Frackelton, M., Hall, R., Kegg, J., Norris, D. and Takenaka, K. (2014). Social media guidelines and best practices: Recommendations from the council of residency directors social media task force, Western Journal of Emergency Medicine. 15(1); 26-30.
Retrieved on March 1 from:
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3935785>.
7. Campbell, L., Evans, Y. and Moreng, M. (2016). Social media use by physicians: a qualitative study of the new frontier of medicine. 16: 91.
Retrieved on March 1 from:
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4946237>.

References

8. Spector, N., Kappel, D., (September 30, 2012) "Guidelines for Using Electronic and Social Media: The Regulatory Perspective" OJIN: The Online Journal of Issues in Nursing Vol. 17, No. 3, Manuscript 1.
9. Langenfeld, S., Cook, G., Sudbeck, c., Luers, T. and Schenarts, P. (2014). An assessment of unprofessional behavior among surgical residents on Facebook: a warning of the dangers of social media, Journal of Surgical Education. 71(6);28-32. Retrieved on March 1 from: <https://www.ncbi.nlm.nih.gov/pubmed/24981657>.
10. Garg, M., Pearson, D., Bond, M., Runyon, M., Pillow, M., Hopson, L., Cooney, R., Khadpe, J. Nomura, J., and Inboriboon, P. (2016). Survey of individual and institutional risk associated with the use of social media, Western Journal of Emergency Medicin. 17(3); 344-349.

References

11. Pearson, D., Cooney, R. and Bond, M. Recommendations from the council of residency directors (CORD) social media committee on the role of social media in residency education and strategies on implementation, *Western Journal of Emergency Medicine*, 16(4); 510-515.
12. Brahm, P. (2016). CMS to inspect SNF's social media policies, McKnight's Long-Term Care News Retrieved on March 1, 2017 from <http://www.mcknights.com/issue/september/01/2016/2554/>
13. Lagu, T., Hannon, N., Rothber, M. and Lindenauer, K. (2010) Patients' evaluations of health care providers in the era of social networking: An analysis fo physician-rating websites, *Journal of General Internal Medicine*. 25(9); 942-946.
14. Perez, C. (March 23, 2016). Nursing home worker posted senior sex videos online: cops, *New York Post* retrieved online on March 23, 2017 from: <http://nypost.com/2017/03/23/nursing-home-worker-posted-senior-sex-videos-to-snapchat/>

References

15. BBC Panorama - Care Home Abuse YouTube video retrieved on March 1, 2017 from <https://www.youtube.com/watch?v=RIJhulQ1LAE>.
16. Worker posts picture of resident and labels it “Jerk” - YouTube video retrieved on March 1, 2017 and later removed on March 24, 2017 from <https://www.youtube.com/watch?v=gv4K1FksaR8>.
17. Petrborough Ontario Nursing Home Abuse YouTube video retrieved on March 1, 2017 from <https://www.youtube.com/watch?v=Btj5dUNMjdg>
18. Bail C. (2016). Emotional feedback and the viral spread of social media messages about autism spectrum disorders, *American Journal Public Health*. 106(7); 1173-1180.
19. Griffis, L. and Falder-Saeed (2016). Perceptions of the influence of social media and therapeutic relationships on nurses: a systematic review protocol of qualitative evidence, *JBHI database of systematic reviews and implementation reports*.

References

20. Holden, A. (2016). Social media and professionalism: does the profession need to re-think the parameters of professionalism within social media? *Australian Dental Journal*. 0: 1-7.
21. American Bar Association retrieved on March 3, 2017 from:
http://www.americanbar.org/content/dam/aba/administrative/law_aging/MandatoryReportingProvisionsChart.authcheckdam.pdf
22. Pollick M. Abuse of the elderly: A review. *Holistic Nurs Pract* 1987;1(2):43-53.
23. Lachs MS, Williams C, O'Brien S, Hurst L, Horwitz R. Risk factors for reported elder abuse and neglect: A nine-year observational cohort study. *Gerontologist* 1997;37(4):469-474.

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