

Physicians, Practices and Social Networks – Gauging the Risks

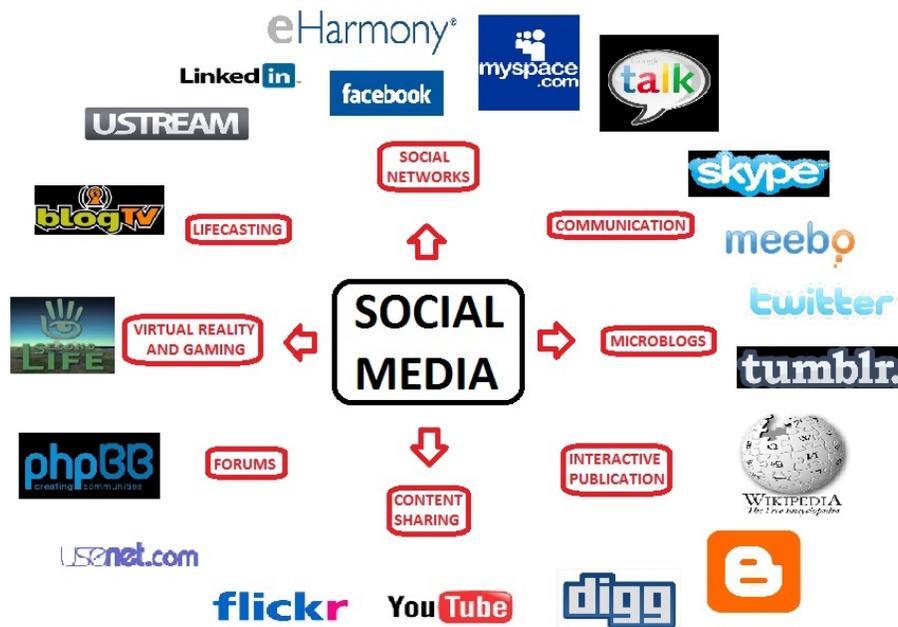
By: Michael J. Schoppmann, Esq.

Kern Augustine Conroy & Schoppmann, P.C.

As physicians react to the growing market pressures to grow and/or maintain their patient populations, many are embarking upon an entry into the world of social networks. While such environments may hold great reward for many businesses, they also hold many concerns and risks unique to physicians and their medical practices.

A “Social Network” is defined by dictionary.com as an online service, platform or site wherein “family, friends and their families, that together create an interconnected system through which alliances are formed, help is obtained, information is transmitted, and strings are pulled. In an organizational setting, it usually constitutes the group of one's peers, seniors, and subordinates who provide information on how to get things done, how the power structure operates, and who holds the strings”

The number of social networks continues to grow exponentially every day and a social network heavily favored one moment may quickly find itself an afterthought or viewed as outdated the next moment. Examples of social networks are illustrated in the chart below:¹



Seemingly attractive, an increasing number of physicians interacting within social media are creating some notable, and dire, consequences. As exposed by the *Journal of the American Medical Association*, a large number of medical students have admitted to using the forums inappropriately to discuss individual patients. Other recent incidents have involved a physician’s office staff posting entries on Facebook and/or Twitter complaining about “difficult” patients and in one case, a Boston pediatrician who blogged throughout his malpractice trial.

Before any physician contemplates their entry into this new, ever evolving environment, they should consider certain preemptive risk management factors before doing so, such as:

- Is the practice prepared to devote ongoing time and capital to this environment?

- Is the practice prepared to vigorously monitor the information posted in response?
- Is the practice committee to routinely updating the information posted?

Absent positive responses to the above noted factors, physicians and medical practices would be better served to withhold their entry in the realm of social media until such time as they are prepared to provide a strong commitment to the demands of social networking. Absent such a commitment, a partial or half-hearted effort will only leave the practice exposed to not only potential liabilities but adverse internet “standing”.

If the practice or physician decides to engage in social networking, a large degree of advance planning and the assigning of structural responsibilities must be considered, such as:

- Who creates the data to be entered?
- Who physically (and routinely) enters the data within the network (and updates the data)?
- How often is the data reviewed and authorized by the physicians of the practice?

Regarding the actual data posted within a social network itself, physicians and practices must also be mindful of standards and/or codes of conduct they are bound to abide by – not only those required by the social network itself, but also those required exclusively of physicians. Issues such as patient confidentiality under state and federal law (HIPAA), conduct requirements under state licensing requirements (boundary violations), contractual terms under payor (both public and private) and the general obligations of law (i.e., prohibiting defamation, libel, etc.) all dictate that great care be taken, especially for physicians and medical practices, as to the actual content within a social network and vigilant scrutiny over the ever changing/updating data.

For even those practices which might decline to pursue efforts within social media, caution should be held over the activities of employees of the practice. Use of personal e-mail accounts while working should be strictly curtailed due to the growing number of unintentional and intentional violations of patient-privacy laws. Moreover, many disgruntled former employees use social networking sites to disparage the practice and/or solicit present employees to join pending workplace claims. Moreover, an increasing number of work-place claims (i.e., harassment, stalking, cyber-bullying, discrimination, hostile work environment, etc.) are originating from social media (Facebook, etc) interactions between employees. To risk management such threats, every medical practice should develop, adopt and issue a written set of detailed policies addressing these issues and prohibiting the crossover of their role (and responsibilities) as employees and social networking. Such policies should be reviewed directly with all practice staff, updated routinely and acknowledged in writing, by every member of the practice.

In conclusion, while not prohibited directly by and law or regulation, any environment which holds unknown risks and is ever changing at a breathless pace, should be disquieting to physicians and medical practices alike. Unlike other forms of business, the practice of medicine carries an extremely onerous degree of oversight and an increasingly powerful body of restrictions. As a result, the best risk management tool for medicine may well be to simply not enter the world of social media until society sets the permissible boundaries to do so.

Kern Augustine Conroy & Schoppmann, P.C., Attorneys to Health Professionals, www.drlaw.com has offices in New York, New Jersey, Pennsylvania and Illinois. The firm's practice is solely devoted to the representation of health care professionals. Mr. Schoppmann may be contacted at 1-800-445-0954 or via email - schoppmann@drlaw.com.

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