

# Social Media and Medical Practices:

## Manage Your Online Reputation and Liability Risk



# The Role of Social Media in Lawsuits

Social media has permeated virtually every aspect of our lives. Its influence extends to the world of health care, even playing a role in medical malpractice litigation. Social media has emerged as a powerful tool for both patients and health care professionals, and can have a significant impact on the way cases are investigated, argued, and resolved. This article explores the role of social media in medical malpractice cases, shedding light on the challenges and opportunities it presents.

## Patient Information Sharing

Patients have more medical and health-related information at their fingertips than ever before. They also have access to social media groups where they can share their medical stories and receive input from people around the world. This can empower patients to take a part in their own care and find support when they discover they have a health condition. However, it can also encourage a patient to seek legal remedies.

### Example:

- ▶ Leah underwent surgery to remove a benign tumor. Following the procedure, she experienced complications, including infections and severe pain. She found a support group on Facebook and connected with others who had gone through something similar. Her discussions with the members of this group led her to believe that the surgeon made a mistake during the operation. She sought the advice of an attorney, pursued a medical malpractice case, and settled the case for a large sum.

## Evidence Gathering and Investigation

It has become a routine part of legal investigations for attorneys on both sides to scour social media for evidence that might favor their client. Plaintiffs and defendants alike are susceptible to having information they post online placed into evidence for a jury to consider. That is why it is important to have a social media policy for your practice and to make sure that all who work at your practice understand the boundaries of their online engagement.

### Example:

- ▶ Hailey, a 24-year-old hairdresser, went to a pain clinic where she received epidural injections to relieve back pain. At her third visit, she complained of feeling a burning sensation down her right arm as soon as she received the injection. Shortly thereafter, she was not able to move her arm past her shoulder and was in debilitating pain. Hailey sued the physician claiming that he placed the needle incorrectly and caused permanent nerve damage. She claimed she could no longer work or lift her young son, and was on prescription pain medication. She even joined support groups on Facebook and regularly posted about her traumatic experience.

However, after filing suit, Hailey's friend posted pictures to her public Facebook page. They showed Hailey styling her friend's hair for her wedding and Hailey holding her son in her right arm as part of the wedding party. These posts damaged Hailey's credibility, and she settled for a much smaller sum than would have been likely without that social media evidence.

## Example:

- ▶ Dr. Reynolds, managing partner of a plastic surgery group, redesigned the group's website. He included a patient testimonials section in support of his statement that the group's doctors are the "best in the state" and that their "rate of complications for every procedure performed is lower than the national average."

Subsequently, a patient suffered complications after a cosmetic procedure and filed a lawsuit. Though they were known complications of such a procedure about which the patient was educated during an informed consent conversation, the statements on the website were used against the surgeon to effectively raise the bar on the standard of care. The jury agreed that these statements accompanied by glowing patient reviews likely influenced the patient to seek care at the practice, and to believe that she would not experience complications because her surgeon had higher than average skill. The jury awarded the patient a modest sum.



## Privacy Concerns

Patient health information is subject to strong privacy protections. However, it can be easy to breach that privacy when responding to online comments or creating content, whether for professional or personal purposes. Not only does this expose the practice to consequences for HIPAA violations, but the information shared could also be used against you in a board action or lawsuit.

## Example:

- ▶ Doug visited his primary care physician complaining of cold symptoms: congestion, headache, cough, and sore throat. He was convinced that he needed antibiotics to clear his infection. His PCP kindly let him know that she would not prescribe antibiotics for a viral infection, but that he should come back if he does not improve in a few days. Later that day, Doug posted a negative online review stating that the physician did not provide quality care and did not listen to his concerns.

The physician responded with good intentions but revealed health information: "Doug, as I explained in the office, viral infections do not respond to antibiotics. Please call the office if your symptoms get worse." Doug did not post again or call the office back. Later, the physician received notice of a medical board complaint alleging that she had violated the patient's privacy and failed to diagnose strep throat. Doug also filed a lawsuit because he claimed he suffered complications from the undiagnosed and untreated strep throat. In both proceedings, the physician's inappropriate response was used as evidence of poor judgment and of the missed diagnosis.

## Example:

- ▶ On a break from work, a physician's medical assistant was sitting at her desk checking her social media accounts. She decided to post a picture of her new ring. She placed her hand on her desk, where she was filing patient test results into medical records. She did not notice that a patient's name and mammogram results were visible in her picture, and posted it to Instagram.

The patient later sued the physician alleging delayed breast cancer diagnosis because the physician did not call the patient with her suspicious test results or recommend follow up testing. The medical assistant's picture proved the date when the physician should have been aware of the result. The physician and patient settled the case for a large sum. Not only was the MA's post a clear HIPAA violation, but it actually helped the plaintiff prove her case.

Social media is unavoidable, but you can take steps to mitigate the risk of violating patient privacy or posting something that may hurt you down the road. Maintain a social media policy and train physicians, advanced health care professionals, and staff on responsible online behaviors along with HIPAA/patient privacy training. Furthermore, actively engage with patients so they feel comfortable verbalizing concerns to you or other members of your staff instead of going online to vent frustrations. Using social media, your website, and/or other forums in a way that could cast you or your practice in a negative light could prove costly in a lawsuit.

# Managing Your Online Reputation

In today's connected world, it is nearly impossible to avoid having an online presence whether you have proactively created social media profiles, maintain a practice website, or are the subject of online reviews. With this in mind, consider taking a proactive approach to managing your online reputation. Here are five tips to help you get started.



Monitor your online presence. Regularly monitor online mentions, reviews, and comments related to your name or practice. Google alerts and other specialized reputation management tools can help you stay informed about what patients are saying about you online.



Engage professionally on social media. Maintain a professional presence on social media platforms. Maintain a separation between your personal and professional profiles.



Protect patient privacy and confidentiality. Always adhere to patient privacy laws. Never share patient information, images, or case details without proper consent. Be cautious about what you share, even when discussing general medical topics, to avoid unintentional breaches of confidentiality.



Address negative feedback. When you encounter negative feedback or reviews, respond in a professional and non-defensive manner. Offer to resolve the issues privately, and demonstrate your commitment to quality patient care. Publicly acknowledging the person who left the review and attempting to speak privately to rectify negative experiences can reflect positively on your reputation.



Provide a means for patients to discuss concerns with you directly. If patients have an outlet to express dissatisfaction or concerns about their experience in your office, they may not feel the need to turn to social media or review forums.

## Responding to Negative Online Reviews

Online reviews can be a double-edged sword. It seems that individuals are motivated to write a review only when their perception of an experience was extremely positive or extremely negative, which can skew the overall rating one way or the other and be an inaccurate representation of your practice. While positive reviews can boost your reputation and attract new patients, negative ones can be equally impactful, potentially damaging your practice's image. In this section, we'll discuss how health care practitioners and practices should respond to negative online reviews to minimize harm and demonstrate professionalism.

- **Try Not To Take It Personally.** Negative online reviews can be emotionally challenging, especially for those who are deeply committed to their profession. However, remind yourself that a review is an expression of one patient's subjective experience, not a personal attack. Try not to let negative reviews intrude on your thoughts.
- **Be Objective.** Allow yourself time to process the review. Attempt to cut through the emotionally charged aspects and pay attention to any specific concerns or issues raised. Is there any constructive feedback that highlights areas where you can improve your services?
- **Maintain Professionalism.** When drafting a response to a negative review, maintain a high level of professionalism and respect, even if you disagree with the comments. It is important to remember your response reflects on you and your practice.
- **Maintain Patient Privacy.** If you choose to post a response to a negative review to attempt reconciliation with the patient and to show others that you care, remember that HIPAA privacy protections still apply even if the patient revealed their own health information. Keep the response general, offer to discuss the patient's concerns offline, and do not engage in a back-and-forth argument online. A potential response might read:

"We take your concerns seriously. To maintain privacy, we cannot discuss health information in a public forum. If you would like to discuss your concerns, please contact the office directly."
- **Attempt to Contact the Reviewer or Answer Their Call.** If you know who the reviewer is, you can attempt to call them and proactively address the situation, or wait for the reviewer to call the office once you have posted your response. Hear them out, offer apologies when warranted, and kindly correct any false information. Finally, come to an agreement on how the patient-physician relationship will proceed.
- **Provide Patients an Internal Outlet.** Patients want to feel heard and that their experience matters. Consider implementing a way for patients to submit comments and concerns directly to you or a designated neutral party within the practice. That way, you may be able to address and resolve the issue before the patient is compelled to go online.

In rare instances, patients may take their anger and frustration too far. The reviewer may become persistent in their negative expressions, making unfair and untrue accusations that you may feel are defamatory or threatening. A few examples of more egregious patient online behavior include:

- A patient who recruited friends and family members to repeatedly post negative reviews on multiple forums.
- A patient who purchased website domains and created websites that included personal attacks on the physician.
- An unhappy patient who posted a review and then repeatedly called the practice, tying up the phone line and saying rude/profane things to office staff.

In such instances, you should consider contacting an attorney who can help you determine the best way to proceed. **If you ever feel in physical danger, contact law enforcement immediately.**

It is distressing to see your or your practice's name cast in a negative light on a public forum. Responding in a kind and professional manner both publicly and in any private discussions with the patient may alleviate the patient's frustration. Even if it does not, others will see that you care and acted to resolve the patient's concerns. Finally, remember you can always call the Risk Team at MICA to help determine your next steps.

# Social Media Policy Template

This template is a starting point, and you should adapt it to your specific office's needs and legal requirements. Be sure to provide proper training to your employees and ensure they understand the policy. For a customizable version of this template, please contact MICA's Risk Team at **800-705-0538** or [rm\\_info@mica-insurance.com](mailto:rm_info@mica-insurance.com).

Practice Name

Policy #

Physician, Advanced Health Care Professional, and Staff Social Media Use Policy

Effective Date

Revision History

[Office Name] recognizes the significance of social media in today's world along with the need to maintain professionalism, protect patient privacy, and uphold the reputation of this practice. This social media policy is designed to provide guidelines for our physicians, advanced health care professionals, staff, and contractors on using social media responsibly and ethically in the context of their professional roles.

## Purpose

The purpose of this policy is to:

- Establish guidelines for appropriate use of social media in a professional context.
- Protect patient confidentiality and privacy.
- Maintain a positive and professional online presence for [Practice Name].
- Mitigate potential legal and ethical risks associated with social media use.



## Scope

This policy applies to all physicians, advanced health care professionals, staff, and contractors employed by or otherwise associated with this practice who engage in social media activity. This policy also applies to any use of social media platforms, online forums, and review websites, including but not limited to:

- Facebook
- X (formerly Twitter)
- Instagram
- LinkedIn
- YouTube
- TikTok
- Blogs
- Forums
- Review platforms
- Any other social media websites

## Guidelines

### Patient Confidentiality

- Never share patient information including but not limited to names, medical records, details about a patient's health, photographs, or any other identifiable information on social media platforms even in response to a patient who revealed their own protected health information.
- Do not discuss specific patient cases or share patient stories online.

### Professionalism

- Represent [Practice Name] in a professional and positive manner when using social media.
- Avoid engaging in negative or derogatory conversations about colleagues, patients, or competitors.
- Be mindful of your tone and language in all social media interactions.

## Personal and Professional Boundaries

- Clearly distinguish between your personal and professional social media accounts.
- Do not use your personal social media account to discuss [Practice Name] or your professional role within the practice without proper authorization.

## Content

- If you are authorized to use social media on behalf of [Practice Name], ensure that the content you post is accurate, up-to-date, and relevant to your professional role.
- If you are authorized to use social media on behalf of [Practice Name], if sharing medical or health-related information, cite credible sources, and make it clear that the information does not constitute medical advice.
- If you are authorized to use social media on behalf of [Practice Name], and you are responding to a negative patient review or comment, use this language: "We take your concerns seriously. To maintain privacy, we cannot discuss health information in a public forum. If you would like to discuss your concerns, please contact the office directly."

## Security

- Protect social media accounts with strong passwords.
- Be cautious of phishing attempts and do not share login credentials with anyone.
- Familiarize yourself with the privacy settings of the social media platforms you use.

## Reporting Concerns

- Report any potential violations of this policy or concerning social media activity to [Name or Title].

## Violations

- Violations of this social media policy may result in disciplinary action, up to and including termination of employment. Legal consequences may also apply in cases of severe breaches of patient confidentiality or other laws.

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Practice Representative

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Date

## About MICA's Risk Team

The Risk Team at MICA offers a collaborative approach to preventing medical malpractice claims and strengthening your defense against them. Our Risk Consultants integrate their legal, nursing, practice administration, and quality management experience into responses and resources that address your pain points. The Risk Team is standing by to answer your calls and emails about regulatory requirements, documentation, managing conflict, policies and processes, and other types of risk. With the support of MICA's Risk Team, you can put your energy into your patients' care. Call or email our Risk Consultants directly at **800-705-0538** or [rm\\_info@mica-insurance.com](mailto:rm_info@mica-insurance.com).

### Services Highlights

- Unlimited access to our Risk Consultants by phone or email. You can rely on MICA's Risk Team for action planning, resources, ideas, information, and guidance.
- Virtual or in-person comprehensive or focused risk assessments of your organization's policies, procedures, and medical record documentation.
- Monthly e-newsletter with links to new resources, samples, templates, and guides. Online risk management and specialty-specific CME courses available on demand at no additional cost.

## About MICA

*We protect, support, and defend the practice of medicine.*

Mutual Insurance Company of Arizona (MICA) is a physician-owned and physician-directed mutual insurance company focused on providing medical professional liability insurance. MICA provides coverage to individual physicians, physician groups, advanced health care professionals, and medical facilities in Arizona, Colorado, Nevada, and Utah. Visit <https://www.mica-insurance.com/> to learn more about the benefits of joining MICA.

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