

Plastic Surgery: Claims Trends, Risk Issues, and Prevention Strategies

Program Speaker

The speaker for this program is Dorie Rosauer, RN, MBA, Senior Patient Safety & Risk Consultant, MedPro Group (Doral.Rosauer@medpro.com)

Dorie has more than 30 years of experience in the healthcare industry and has achieved an understanding of the challenges and opportunities facing both clinicians and hospitals. Throughout her career, Dorie has worked as a staff nurse, nurse manager, and nursing supervisor.

Additionally, Dorie has managed the day-to-day organizational operations of quality, risk management, infection control, safety, self-insured retentions, and physician professional liability. During her recent years as a risk management consultant, Dorie's focus has been on identification and implementation of cutting-edge, proactive, risk-reduction strategies.

Dorie is licensed as a registered nurse in Illinois and earned her MBA from St. Ambrose University, Davenport, Iowa. She is a member of the American Society for Healthcare Risk Management and the Wisconsin Society for Healthcare Risk Management. Dorie is past president of the Illinois Society of Healthcare Risk Management.



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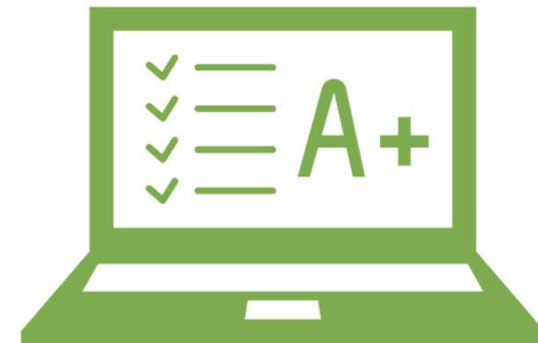
Today's faculty, as well as CE planners, content developers, reviewers, editors, and Patient Safety & Risk Solutions staff at Medical Protective have reported that they have no relevant financial relationships with any commercial interests.



Objectives

At the conclusion of this program, participants should be able to:

- Evaluate closed-claims data to identify patterns and trends in malpractice risk
- Discuss the importance of patient selection criteria and screening for body dysmorphic disorder (BDD)
- Identify risk-reduction strategies to address unrealistic patient expectations, patient complaints, and requests for refunds/waivers
- Identify best practices for managing social media and advertising risks





The Landscape of Plastic Surgery Claims

American Society of Plastic Surgeons



By the Numbers (Millions)

- 15.6 cosmetic procedures
- 1.7 surgical procedures
- 13.9 minimally invasive procedures
- 5.8 reconstructive procedures

Location

- 71% office
- 9% hospital
- 19% ambulatory surgery center (ASC)

Patient Data

- 50% repeat patients
- 44% multiple procedures at same time



Source: American Society of Plastic Surgeons. (2014). *2014 plastic surgery statistics report*. Retrieved from <http://www.plasticsurgery.org/news/plastic-surgery-statistics/2014-plastic-surgery-statistics.html>

PIAA data highlights

PLASTIC SURGERY MPL HIGHLIGHTS

2009-2013

AVERAGE INDEMNITY (2013 DOLLARS)

2004-2008

\$250,066

2009-2013

\$173,917

DECREASED

30.5%

28%

RESULTED WITH AN
INDEMNITY PAYMENT

1,551



Source: PIAA Specialty Specific Series, 2014 Edition, January 1, 2004–December 31, 2013

PIAA data highlights

TOP CHIEF MEDICAL FACTORS

1. Improper performance
2. No medical misadventure
3. Failure to supervise or monitor case
4. Failure to recognize a complication of treatment
5. Surgical foreign body left in patient after procedure

TOP OUTCOMES

1. Unhappy with the results of plastic surgery
2. Postoperative infection
3. Dyschromia
4. Specified complications of procedures
5. Desire for plastic surgery

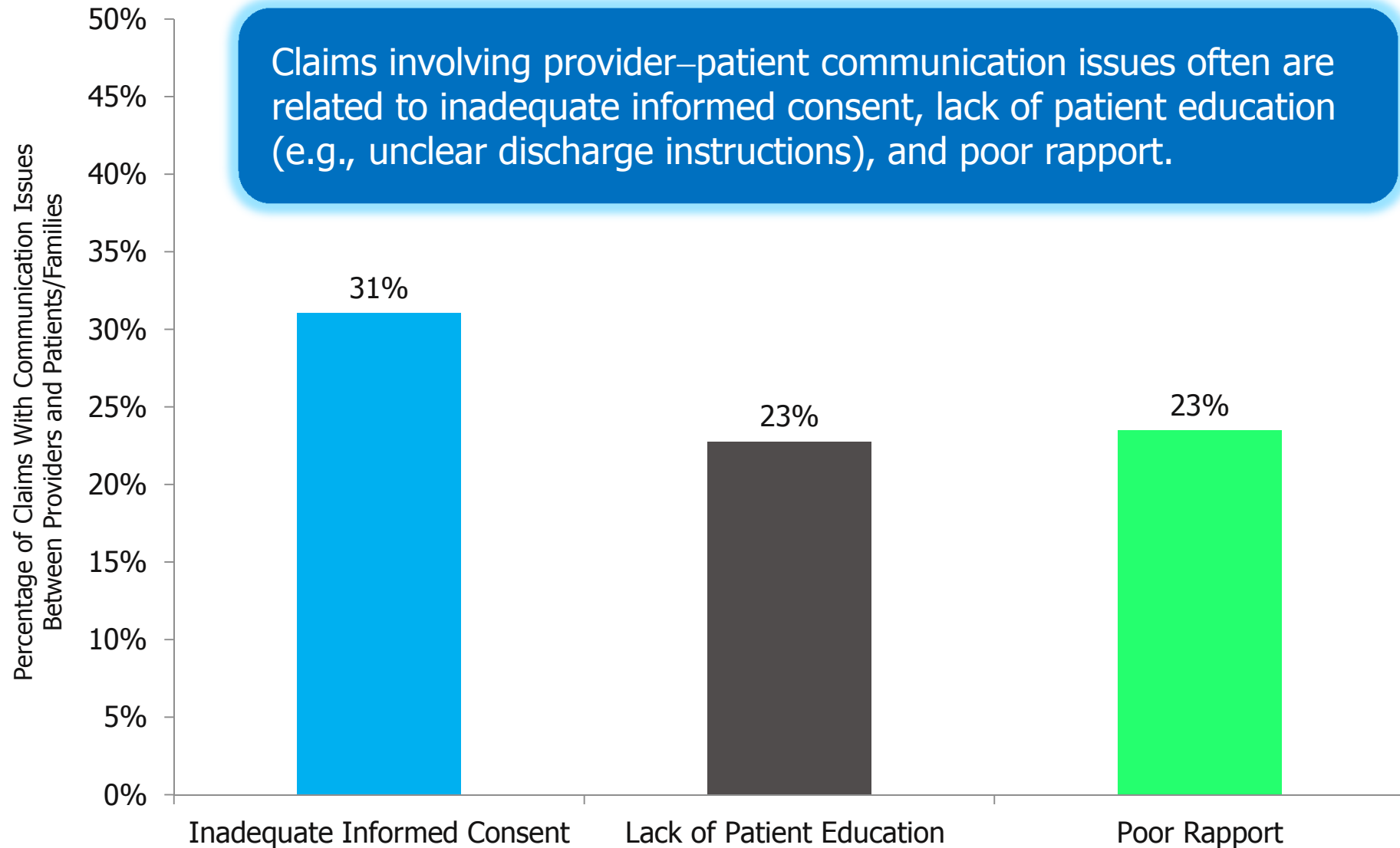
AVERAGE DEFENSE EXPENSES (2013 DOLLARS)



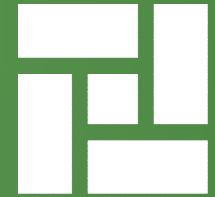
Source: PIAA Specialty Specific Series, 2014 Edition, January 1, 2004–December 31, 2013

Communication issues between providers and patients/families

Claims involving provider–patient communication issues often are related to inadequate informed consent, lack of patient education (e.g., unclear discharge instructions), and poor rapport.



Source: MedPro Group closed claims, 2005-2014



Case Studies

Standard of care

Standard of care: “In law of negligence, that degree of care which a reasonably prudent person should exercise under same or similar circumstances.”

— *Black’s Law Dictionary*



Case example: face lift

Patient

Female in her late sixties.

Chief Complaint

Patient requested a lower face lift procedure.

Case Overview

Patient states that she consented to an “S” facelift; however, a rhytidectomy with platysmaplasty was performed, which involved fat harvesting from the hips/buttocks.

Outcome

Patient was not satisfied with the results, including visible scarring around the ears. She maintained that she was not given appropriate information about the scheduled procedure; therefore, she could not give a fully informed consent.



Case example: contributing factors and risk strategies

Contributing Factors

- Inadequate informed consent
- Failure to provide informed consent information in layman's terms
- Inadequate communication with the patient about the selected procedure
- Failure to adequately manage patient expectations

Risk Strategies

- Provide thorough informed consent for each procedure.
- Provide patient education and consent information in layman's terms.
- Gauge patient understanding and expectations using techniques such as "teach back."



Case study: wound infection

Patient

Female patient in her fifties; history of cocaine use; current smoker; previous rhinoplasty.

Chief Complaint

Patient requested plastic surgery for a nose deformity.

Case Overview

Plastic surgeon did the following procedures: septorhinoplasty (including reconstruction with implant), bilateral upper/lower eyelid blepharoplasty, and facelift. At the first postoperative office visit, the patient complained about width of nose. The doctor advised her to wait for swelling to subside. Thereafter, the patient called the doctor several times per day complaining about nose width/inability to look in mirror. Further, the patient continued to smoke, picked at the incisions, and missed appointments. Finally, the doctor advised the patient that he would no longer treat her, except in emergency.

Outcome

Patient developed a wound infection; nasal implant removed; but the patient had permanent damages.



Case study: contributing factors and risk strategies

Contributing Factors

- Patient's at-risk behavior (i.e., smoking, cocaine use, preoccupation with examining surgical site)
- Patient noncompliant with treatment recommendations

Risk Strategies

- Utilize patient selection and screening criteria.
- Develop a strategic plan for managing noncompliant patients, including documentation of noncompliance in the patient record.





Patient Selection and Screening

Proactive screening process

Have you carefully reviewed the patient's medical history?
(Obtain records in advance, if possible.)



Do gaps exist in the patient's history/information?



Does the patient have realistic expectations?



Why did the patient choose your practice?



Does the patient mention dissatisfaction with previous
medical providers?



Does the patient have a history of doctor shopping?



Does the patient have to travel a long distance to get to your
office? Does he/she have transportation issues?



Screening for BDD



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UNDERSTANDING THE
FACTS

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LIVING AND THRIVING

TAKING ACTION

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Home / Understanding the Facts / Related Illnesses / **Body Dysmorphic Disorder (BDD)**

Body Dysmorphic Disorder (BDD)

UNDERSTANDING THE FACTS

Generalized Anxiety
Disorder (GAD)

Panic Disorder &
Agoraphobia

Social Anxiety Disorder

Specific Phobias

Obsessive-Compulsive
Disorder (OCD)

Posttraumatic Stress
Disorder (PTSD)

Depression

Bipolar Disorder

Suicide and Prevention

Most of us have something we don't like about our appearance — a crooked nose, an uneven smile, or eyes that are too large or too small. And though we may fret about our imperfections, they don't interfere with our daily lives.

But people who have body dysmorphic disorder (BDD) think about their real or perceived flaws for hours each day.

They can't control their negative thoughts and don't believe people who tell them that they look fine. Their thoughts may cause severe emotional distress and interfere with their daily functioning. They may miss work or school, avoid social situations and isolate themselves, even from family and friends, because they fear others will notice their flaws.

They may even undergo unnecessary plastic surgeries to correct perceived imperfections, never finding satisfaction with the results.

Characteristics of BDD

BDD is a body-image disorder characterized by persistent and intrusive preoccupations with an imagined or slight defect in one's appearance.

People with BDD can dislike any part of their body, although they often find fault with their hair, skin, nose, chest, or stomach. In reality, a perceived defect may be only a slight imperfection or nonexistent. But for someone with BDD, the flaw is significant and prominent, often causing severe emotional distress and difficulties in daily functioning.

BDD most often develops in adolescents and teens, and research shows that it affects men and women almost equally. About one percent of the U.S. population has BDD.

RELATED LINKS

Podcast: Body Dysmorphic
Disorder (BDD)

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QUICK LINKS

Generalized Anxiety Disorder
(GAD)



Proactive screening process for BDD

Are you worried about how you look?



How much time per day do you spend thinking about how you look?



Is your main concern that you may not be thin enough or you may be too fat?



Has this problem with how you look affected your life?



Source: Ahmed, I., et al. (2014). Body dysmorphic disorder. Medscape. Retrieved from <http://emedicine.medscape.com/article/291182-overview>

Remember

Just because you *can* treat someone does not mean that you *should*!



Not a good fit?

Accept

- Be clear about boundaries, limitations, and expectations.
- Document thoroughly.
- Conduct informed consent.

Decline

- Do not charge for visit.
- Tell patient you cannot meet their needs.
- Advise them to find another doctor.





Patient Expectations

Impact of informed consent

“Effectively engaging patients in their own health care through the informed consent process may be one of the most practical steps in reducing the likelihood of litigation.”

— Steven R. Stanford, JD
ASA Newsletter, July 2006



Informed consent essentials

Patient name

Procedure name

Description of the procedure

Risks and benefits of the proposed treatment or procedure

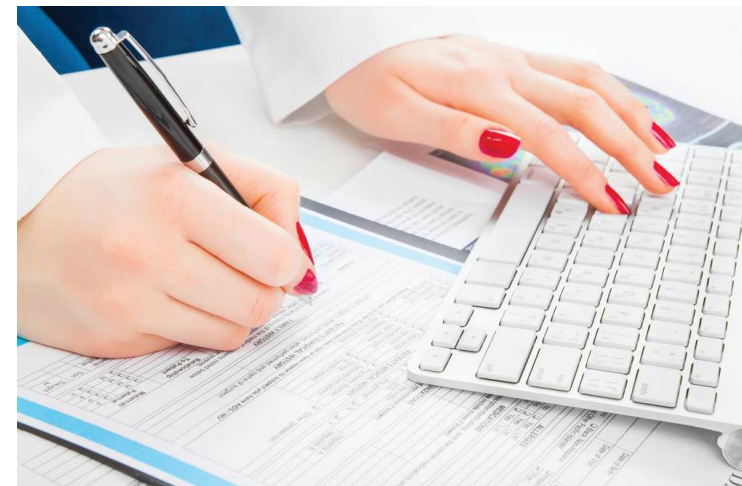
Treatment alternatives, including doing nothing

Patient (or legal representative) memorializing understanding and providing consent preoperatively

Witness signature

Important Considerations

- Does the patient need an interpreter?
- Does the informed consent discussion and form(s) use layman's terms?
- Is the patient having simultaneous procedures? Have they all been discussed as part of informed consent?



Teach-back technique

“I want to be sure that I did a good job explaining your problem. Can you tell me . . .”





Complaints, Refunds, and Waivers

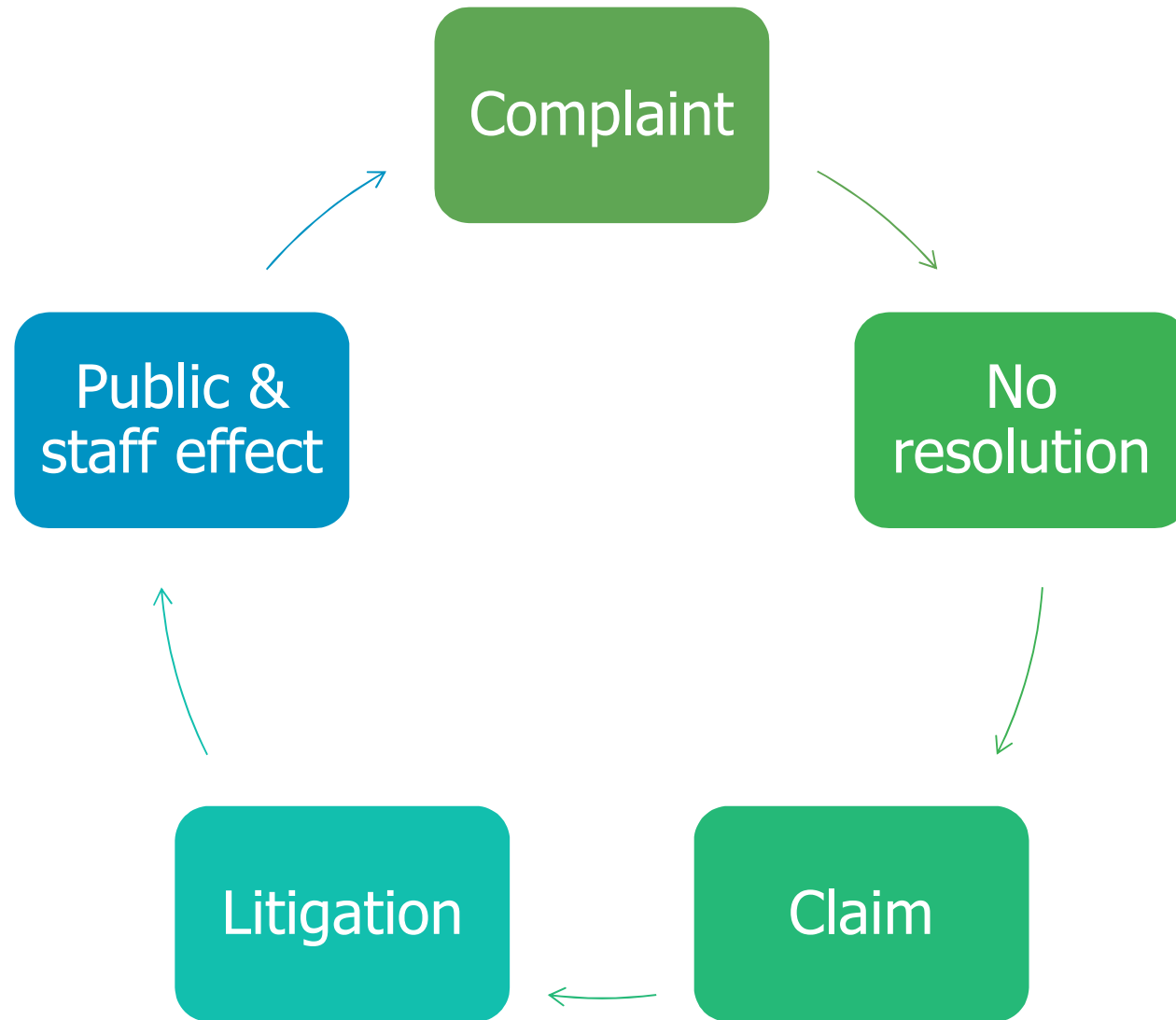
Turning negative feedback into positive results

“Your most unhappy customers are your greatest source of learning.”

— Bill Gates



Complaint–litigation cycle



Proactive complaint management

Does your practice have protocols for identifying and responding to patient complaints?

Does your practice educate staff about your complaint protocols?

Has your practice assigned someone to handle and respond to patient complaints?

Does your practice promptly respond to complaints before claims are filed?



Handling complaints using LEAP

Listen

Repeat back to affirm understanding.

Empathize

Identify emotion exhibited — e.g., anger, fear, or disappointment

Apologize

I am sorry that I did not meet your expectations.

Plan

Develop/execute a plan to address the complaint.

Always conclude the meeting:
“Thank you for bringing this to my attention.”



Refund and waiver options and considerations

- Options:
 - Deny the request for a refund or waiver.
 - Refund/waive the full amount paid.
 - Refund/waive a portion of the amount paid.
- Considerations:
 - A refund/waiver can be effective in diffusing patient dissatisfaction; it is not an admission of liability.
 - Notify patient in writing of decision.
 - Seek release from liability (if appropriate).
 - Medicare patients — special considerations apply for “professional courtesy discounts” (other than for financial hardship).
 - Consult your professional liability carrier and/or legal counsel for specific advice.



Advertising and social media risks

What advertising and social media issues have occurred with patients in your practice?



Did you realize that selling products in your office is a form of advertising?



Advertising: makeover plastic surgery website (example)

Mission

"Our staff has one goal: to understand and listen to your desires and then work together to realize your expectations. Check out the procedures, and contact us today to realize the perfect you."

Testimonials

"You changed my life. I never dreamed it would make this much difference in my life. I love the way I look now, and I never have before. It has cascaded over into all aspects of my life. Thank you so much."



FTC Guidelines on Advertising

- Prohibit unfair or deceptive practice.
- “Ad must be truthful, not misleading, and, when appropriate, backed by scientific evidence. The Federal Trade Commission enforces these truth-in-advertising laws.”
- Fraudulent claim: “Undocumented case histories or personal testimonials by consumers or doctors claiming amazing results.”



Advertising

Office of Inspector General (OIG)

- Opinion letters

American Medical Association E-5.02 Advertising and Publicity

- Educational background of the physician
- Basis on which fees are determined (including charges for specific services)
- Available credit or other methods of payment
- Any other nondeceptive information

State Regulations

- Medical Practice Act
- Additional state regulations may apply



Advertising risk-reduction checklist

Have you sought legal advice on your advertising (recommended)?

Do you periodically review your advertising, including website content, products sold in your office, brochures, and testimonials (e.g., do you have consent of the patient).

Does your advertising generate realistic expectations?

Are ads free of guarantees and promises?

Is advertising content truthful?

Can all claims in your advertising be substantiated?

Do you think your advertising has had an impact on your patients' expectations?



Communication technologies and social media

Facebook, Twitter, LinkedIn

Instagram, Pinterest, YouTube

Websites, blogs, RSS feeds

Skype, FaceTime, SnapChat

Email, patient portals

Apps



Case study: online forum dispute

Scenario

Postoperatively, patient unhappy with plastic surgeon's office staff and the amount of medical expenses

Case Overview

Claimant joined an online forum and posted negative comments about the surgeon's billing practices, office staff, and efficacy of care. Posts included extensive personal health history details.

Outcome

Surgeon responded to the posts and refuted certain points, but did not disclose any new information about the claimant. Claim filed; alleged invasion of privacy.

Key Issues

Should providers respond to a patient's online posting of negative comments about the provider's practice?



Managing online reviews: options to consider

Do nothing.

Remove or ask the webmaster to remove the post.

Do NOT engage in an online debate!

Ask trusted patient to post positive comments.



Social media policies and employee rights

Does your practice's social media policy address off-duty conduct?

- Be wary of trying to restrict what an employee can or cannot say about the practice outside of work.
- Avoid policies that overstep areas in which employees have a high expectation of privacy (e.g., personal email, password-protected web pages, etc.).
- Avoid policies that penalize employees for engaging in protected concerted activity (e.g., discussing working conditions with coworkers).



American Medical Association social media guidelines

Patient privacy and confidentiality must be maintained in all environments.



Personal use of Internet/social networking — use privacy settings and all safeguards.



Monitor personal Internet presence.



Maintain appropriate boundaries in provider–patient relationship.



Separate personal and professional content.



Risk management strategies



Keeping a Finger on the Pulse of Social Media in Healthcare: Understanding Evolving Roles and Risks

■ Viviane Jesequel, RN, BS, HCRM

"Social media" is simply a broad umbrella term that covers a wide range of electronic communication tools, such as email, social networking websites, blogs, video sharing and conferencing tools, mobile applications, and more.

The growth and usage of social media continue to influence not only the American public, but the world at large. Estimates suggest that nearly 1 in 4 people use social networks.¹ With the rapid expansion of these technologies, one can assume that in 2014 and beyond, social media will become even more prevalent.

In the past, healthcare was relatively slow to implement social media tools, primarily because of concerns regarding the potential risks of violating patient privacy. However, over the past few years, an increase in implementation has occurred — mainly due to consumer demand.

A 2013 article from *Healthcare IT News* says "It's no secret that a growing percentage of today's patients are increasingly using digital tools as part of their overall health maintenance. In fact, a recent Pew Research Center study said that 1 in 3 American adults have used the web to figure out a medical issue. In another survey . . . 41% of people said social media would affect their choice of healthcare provider."²

With this growing emphasis on electronic communication and the importance that patients place on it, healthcare providers might be eager to implement these technologies in their organizations and practices. However, leveraging social media for professional purposes can be a slippery slope, and its usage in healthcare presents various challenges.

The Big Picture

Social media has experienced an explosion in popular culture. Did you know that:

- Facebook has more than 1 billion active monthly users and 665 million daily users?
- Twitter has approximately 500 million tweets per day?
- YouTube has more than 1 billion unique monthly visitors. More than 6 billion hours of video are watched each month, and about 100 hours of video are uploaded every minute?
- LinkedIn has 250 million members in over 200 countries and territories around the globe.

Sources:

<https://www.facebook.com/facebook>
<https://about.twitter.com/company>
<http://www.youtube.com/yt/press/>
<http://www.linkedin.com/about-us>

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CHECKLIST Social Media



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Because of the rapid expansion and increasing popularity of social media, healthcare providers might be eager to implement these technologies in their practices. However, leveraging social media for professional purposes can be a slippery slope, and its usage in healthcare presents various challenges.

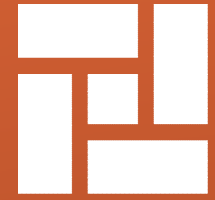
Whether your practice is already using social media or planning to implement a social media strategy, this checklist can help you focus on important risk management considerations. For more detailed information or specific concerns related to social media, contact your MedPro Group patient safety and risk consultant.

	Yes	No
Has your practice considered its social media strategy, including the goal of the communication, the target audience, and what types of information will be promoted?	<input type="checkbox"/>	<input type="checkbox"/>
Does your practice have an approved policy or set of policies on the use of social media, including email? If not, is one in development?	<input type="checkbox"/>	<input type="checkbox"/>
Does your social media policy specifically state who is authorized to develop content, and does it outline a detailed plan for content review and approval?	<input type="checkbox"/>	<input type="checkbox"/>
Does your practice provide training on social media policies as part of new employee orientation and ongoing staff education?	<input type="checkbox"/>	<input type="checkbox"/>
Have staff members received HIPAA training, and are they aware of their obligation to maintain patient privacy? Have they signed confidentiality agreements?	<input type="checkbox"/>	<input type="checkbox"/>
Does your practice's social media policy include disciplinary actions for policy violations? Are consequences consistent with existing patient privacy and confidentiality policies?	<input type="checkbox"/>	<input type="checkbox"/>
Are staff members aware of how to report inappropriate use of social media?	<input type="checkbox"/>	<input type="checkbox"/>

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Summary

Key points

Patient selection and screening

- Patient selection criteria should include screening for BDD.
- It is okay to **not** accept a patient for an elective procedure.
- Considering the operative setting for each procedure is important.

Patient expectations and complaints

- The physician should conduct a thorough informed consent.
- The physician should use layman's language and comprehension techniques, such as teach-back.
- The practice should have a well-defined patient complaint process.
- Providing a refund or waiver is not an admission of liability.

Social Media and Advertising

- The practice should develop and implement social media policies.
- The practice's social media accounts and advertising should be routinely monitored for potential issues.
- Physicians should avoid responding via social media to a negative comments or reviews.

