Social Media and the Workplace:

Legal, Ethical, and Practical Issues

Social Media

- Overview
- Rewards
- Risks
- Ethics issues
- Compliance issues
- Policy best practices
What is Social Media?

- Talking
- Arguing
- Complaining
- Sharing
- Connecting
- Creating

- Family
- Friends
- Work Colleagues
- Community Members

Bennett, E. Hospital Social Media Overview and Current Realities (2011) ebennett.org

Then and Now
Health Care
Rewards of Social Media

- Customer service
- Community outreach
- Education
- HR mining (recruitment, discipline, termination)
- Marketing
- Public relations
- Crisis communications
- Medblogging
- Watching the competition
- Recruitment
- Brand monitoring
- Fundraising
- Promoting employee wellness & support groups

- Bennett, E. Hospital Social Media Overview and Current Realities (2011) ebennett.org

Rewards

- Woman and her mother are leaving Mayo Clinic
- They stop in the atrium to listen to an elderly couple play the piano
- Woman asks couple if she could use her cell phone to video them playing the piano
- Couple says yes
- Woman posts video to You Tube
- 7.5M+ people have viewed the video
- $ advertising value? Priceless

- http://www.youtube.com/watch?v=RI-0tK8Ok0
4.74 Degrees of Separation?

- Facebook
- Twitter
- Good or bad?

Is Social Media Disruptive?

- Health Care Values
  - Risk averse
  - Information from authoritative sources
  - Privacy and security regulated
  - Data tightly controlled
  - Tight intellectual property

- Social Media Values
  - Risk taking
  - Network reputation
  - Anyone can publish anything
  - Information freely distributed
  - Use licenses with few restrictions

Bennett, Ed. Hospital Social Media Overview and Current Realities (2011)
Risks of Social Media

- Employees sharing too much or inappropriate information
- Compliance with protected health information privacy and security laws
- Compliance with information retention policies
- Loss or exposure of confidential information
- Damage to brand reputation

- Bennett, E. “Hospital Social Media Overview and Current Realities” (2011) ebennett.org

Risks of Social Media

- Involvement in data collection process for legal action
- Regulatory fines
- Loss of organization, employee, or patient data
- Compliance costs
- Lost revenue
- Damaged brand reputation/customer trust
- Direct financial costs
- Litigation costs
- Reduced stock prices

- J. Wednt, “Businesses See Risks but Proceeding to Immerse Themselves in Social Media Anyway” (2011). linkedin.com
Risks

- A fake hospital CEO was impersonating a real CEO and “friending” his colleagues and employees.
- Fake CEO sent an “I love you.” message to one of the employees.
- Everyone could access the fake account except for the real CEO.
- As health organizations incorporate social media in strategy, enhancing security efforts are a top 2012 priority.

Risks

- Hospital worker fired over Facebook comments about patient.
  - She said she came face to face with a cop killer and hoped he rotted in hell.
  - Removed post.
  - Fired anyways.
- Nurses’ jobs at risk for allegedly posting patient info on Facebook.
  - 5 nurses investigated for breaching patient privacy.
  - Union said they discussed patient care hypothetically in an educational context.
  - Fired.

Ethical Issues

- How do we balance benefits and risks?
- Privacy?
- Truthfulness?
- Safety and security?
- Patient well-being and trust?
- Discussing work related issues on the internet?
- Who is posting marketing updates?
- Is it ok to monitor mentions of the brand?
- Is it ok to follow patients to gather information?

Ethical Issues

- Discussing work related issues on the internet?
- Using social media for coordination of care?
- “Friending” patients and colleagues?
- Who is posting marketing updates?
- Is it ok to monitor mentions of the brand?
- Is it ok to follow patients to gather information?
Compliance Issues

- HCCA 2011 social media survey findings
  - 1/2 have no policy
  - 1/3 have a general policy
  - 1/3 have policies that include usage outside of work
- LinkedIn allowed more than Facebook or Twitter
- Discipline for social media violations is rising
- Most social media monitoring is passive
- Having a policy and not enforcing can be worse than no policy
- Social media law is new and rapidly developing


Legal Issues

- Employer liability issues
  - Electronic discovery
    - Electronically stored information
    - Social media not stored on organization’s servers
  - National Labor Relations Act
    - Can be protected, concerted activity
    - Posting about unfair employer policies and practices
    - Disparaging comments
    - Protects all employees, not just union members
  - Federal Trade Commission
    - Employees cannot anonymously endorse or write a testimonial about the organization’s products
Legal Issues

- Employer liability for employee social media posts
  - Defamation
  - Copyright infringement
  - False advertising
  - Discrimination
  - Harassment
  - Protected health information (HIPAA, HITECH, GINA)

Legal Issues

- Physician liability
  - Medical malpractice
  - Defamation
  - Privacy and confidentiality laws
  - Patient abandonment
Case Law

- Case highlights
  - Social media
  - Health care
  - National
  - Georgia
  - 11th Circuit

Social Media Policy Content

1. Who can access social media on the organization’s network
2. Apply network settings to allow only designated staff to access social media (marketing) to help protect privacy and security
3. Inappropriate uses of social media on organization’s network or personal device (defaming the employer, divulging proprietary information, or violating privacy rights)
Social Media Policy Content

4. Ramifications for inappropriate use (up to and including termination)
5. Responsibility of employees who witness inappropriate use
6. Employees understand and acknowledge that they are not speaking on behalf of the organization even on personal social media sites
7. Responsibility of employees outside of the organization (risk of civil liability)


Social Media Policy Best Practices

- Policies
- Position statements
- Guidelines
- Employee education
- Monitor social media channels in the organization
- Identify closed groups
- Restrict content posting
- Modify policies related to codes of conduct, handbook, e-media use, discrimination, harassment, and disciplinary action

Policy Contributors

- A member of senior leadership
- Compliance
- HR
- Legal
- Information Technology
- A clinical representative
- Health Information Management
- Marketing
- Public Relations/Communications
- Employees

Sample Social Media Policies

- Mayo Clinic, Rochester, MN
- Emory Healthcare, Atlanta, GA
- Swedish Hospital, Seattle, WA
- Kaiser Permanente, Oakland, CA
- Cleveland Clinic, Cleveland, OH
AMA Social Media Policy

- Originated in 2009
  - Maintain positive online presence
  - Express views
  - Foster relationships
  - Preserve patient-physician relationship
- AMA revised interim guidelines 2011
  - Suggests separating personal and professional content online
  - Maintain appropriate boundaries
  - Politely refuse Facebook friend requests from patients


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