Protecting Patient Privacy on Social Media

How to Ensure Your Digital Marketing Efforts Are HIPAA Compliant

By Larry Emmott, DDS

How many times have you seen a Facebook post like the one below?

"Congratulations to [enter the patient's name], the newest member of the Sunnydale Dental 'No Cavities Club!'"

There's also a cute photo of the patient smiling accompanying the post. What a great way to use Facebook to reward someone for his or her good hygiene and to promote a sense of community among your patients.

This is also a clear violation of Health Insurance Portability and Accountability Act (HIPAA) privacy rules.

According to the May 27, 2016, article published by the nonprofit newsroom *ProPublica*, "Stung by Yelp Reviews, Health Providers Spill Patient Secrets," a California dentist responded to a negative online review with this:

"I looked very closely at your radiographs, and it was obvious that you have cavities and gum disease that your other dentist has overlooked. … You can live in a world of denial and simply believe what you want to hear from your other dentist or make an educated and informed decision."

This particular dentist just took a bad situation and made it worse by revealing protected health information (PHI). The response has become a privacy violation.

Social media cannot be ignored; it has become an incredibly powerful marketing tool. On the other hand, as dental professionals, we have an ethical and legal responsibility to protect our patients' privacy. Before we can do this, we must first understand HIPAA privacy laws in the context of social media.

What Is Social Media, and What Constitutes a HIPAA Violation?

Before getting into the regulatory weeds, let's start with some basic definitions.

Social media comprises more than Facebook; it includes any platform with user-generated content, such as Twitter, Instagram, LinkedIn, Snapchat, Google+, Tumblr, YouTube, Yelp and hundreds of others. That said, Facebook dominates the social media landscape in the United States, and many dentists have a Facebook page for their practice. Other social media sites that dentists need to be aware of are YouTube and the user-review sites Google and Yelp. The rules regarding Facebook privacy apply to all the other sites as well.

HIPAA requires health care professionals not to divulge PHI. The HIPAA rules have several pages defining PHI; however, for most dentists, it is easiest to simply define PHI as everything. If it is in a patient chart, it is protected.

What if you don't use the patient's name? You are still at risk of violating HIPAA. The regulations have pages defining identifiers, which include not just names, but also initials, ZIP codes, account numbers, birthdays and photos, among others. It is even a violation to simply admit that someone is in fact a patient.

HIPAA privacy violations are investigated by the Office for Civil Rights (OCR). In recent years, OCR has become much more aggressive. It is seeking out offices to investigate and is handing down huge fines, when in the past, OCR may have simply issued a reprimand and required the office to fix what was wrong. In February 2017, Children's Medical Center of Dallas was fined $3.2 million after 3,800 records were exposed on a stolen laptop, according to an article published Feb. 2, 2017, in *Becker's Health IT & CIO Review.*

According to research done with Yelp by the Department of Computer Science and Engineering at the New York University Tandon School of Engineering, and reported by *ProPublica* in the May 27 article, more than 3,500 one-star reviews were found in which patients mention privacy or HIPAA. The exposure of a single patient's PHI on Facebook or Yelp may in itself not be a huge issue, but if it leads to an OCR investigation, it will quickly become a major concern with the potential for sanctions and fines.

What Are Examples of HIPAA Violations?

Amy Wood is president of ACS Technologies LLC, a dental information technology provider in Northern California. For the past several years, she has been focusing on HIPAA and data breach mitigation. Wood says that for the most part, dentists are well-meaning with their use of Facebook, and the issues she typically sees are inadvertent. Nevertheless, once again, what's perceived to be a small social media violation — an incident which by itself may not be a big concern — can become big indeed if it leads to a general HIPAA investigation.

The following outlines some examples of violations Wood has seen dentists and dental teams make with social media.

The dentist assigns the task of monitoring the practice's social media sites to a team member with limited or no training. The team member then responds to patient questions or complaints directly using the social media platform. Remember: It is a violation to even acknowledge that the person posting on the Facebook page is a patient.

Online responses can inadvertently reveal PHI by acknowledging a patient's diagnosis when he or she asks about treatment, or revealing past treatment by asking about recovery. The only safe approach is to refer only to generic dental issues and not respond directly to a patient. Instead, if a patient has a specific question or complaint, take it off-line via an email (which needs to be encrypted if it contains PHI) or a phone call.

Another social media issue Wood warns us about comes up when staff members or the dentist send "friend" requests to patients via their personal Facebook pages. The basic rule is don't do it. Encourage your patients to "like" your practice page rather than try to become Facebook friends with them. Keep your personal page personal.

When creating your social media sites, be sure they are created in the name of the dentist or the practice. Sometimes, dentists assign the task of creating a practice Facebook page to a team member, and he or she sets it up under his or her name, not the doctor's. Don't do that. Do claim your Google business page and Yelp page.

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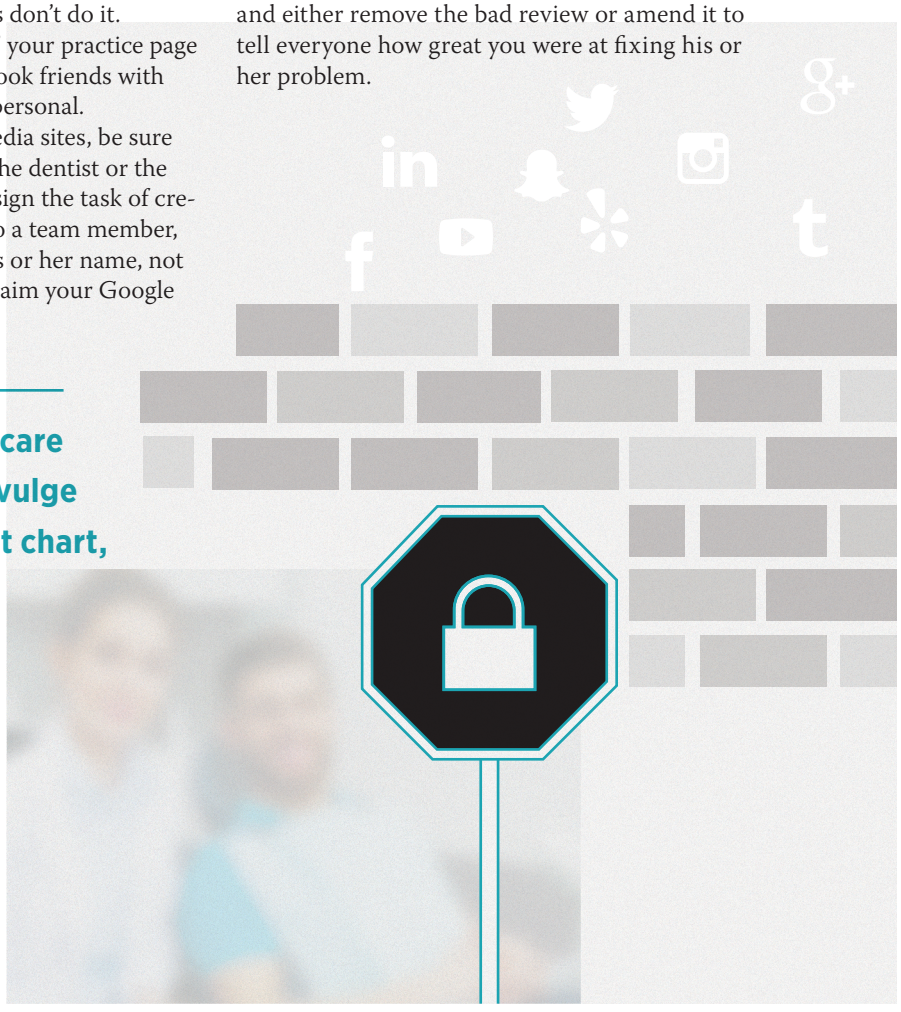
When you are confronted with a negative online review, it can be hurtful and disconcerting. What should you do? The best response by far is to ignore the negative review and overwhelm it with positive reviews. This is easier said than done. Services are available to help, such as Banyan, Sesame Communications, Demand Force, etc., but what it usually comes down to is asking happy patients to review you. If you have 24 five-star reviews and one grouchy two-star review, don't worry about the bad one.

If you do respond to a negative online review, do not confront the patient. Do not reply as the dentist, as in the previous example, by arguing and revealing PHI. You may respond in generic, apologetic terms. For example: "We are sorry you had this problem. We pride ourselves on being on time and will do a better job next time."

Or better yet, if you know who the patient making the complaint is, contact him or her off-line. Apologize and fix what can be fixed. Often, when you do this, the unhappy patient will go back and either remove the bad review or amend it to tell everyone how great you were at fixing his or her problem.



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What about Posting Photos and Videos to Social Media?

Photos and videos are another area of potential concern. Patients need to sign a specific release, and parents need to sign a release for children younger than 18 years old. That's easy enough, but a photo issue most dentists rarely consider is the use of smartphone cameras by both staff and patients. For example, Wood found a selfie of a patient standing in front of a monitor that had the daily schedule displayed with patient names, treatments and other PHI clearly visible.

Patient use of smartphones in the treatment areas is an issue for a number of reasons. Reality TV personality Kim Kardashian posted a photo of herself in the chair with a rubber dam, and now, taking selfies while seated in the dental chair has become a thing. Some dentists have attempted to ban phones from the exam area. (Most people would rather lose a kidney than lose their phones, though.) For most people, once the phone is out of sight, separation anxiety sets in within minutes. People will strongly resist leaving their phones. However, you can and should develop a policy of no photos or videos anywhere in the office. Make sure patients understand it is a privacy issue; it is not about the practice, but rather, it is just the right thing to do to respect other patients.

Some patients even ask to video record their treatment or case presentation. That is a whole different dental legal issue; however, the general consensus is no. Do not allow this.

Dentists and staff are using smartphones to take patient photos such as before-and-after images, diagnostic planning photos or even identification photos for the digital chart. This can be problematic even if the photos are stored in the chart and never posted to social media. If the dentist or team member has his or her phone set up for cloud storage of images, and most of us do, then as soon as that patient photo is taken, it is whisked up to their personal iCloud or Dropbox account, etc., for storage. Now, you have a problem.

If your smartphone patient images are on iCloud, Apple is now a business associate storing digital PHI. You will need a business associate agreement (BAA) with Apple, and if iCloud is hacked, you will have a reportable data breach. So either don't use your phone to take patient photos, or turn off the cloud storage feature when you do. This is a task, by the way, that is easier said than done.

Is it Best to Just Avoid Using Social Media Altogether?

With all of these issues, it may seem best just to steer clear of social media. The problem is that even if you are not interested in social media, social media is interested in you. Patients will write reviews, and there are more than 1 billion active daily users on Facebook. An alternative is to use a service to help you create social media content and user reviews.

Social media and review sites are the "word of mouth" of the digital age. Using social media well, while also protecting patient privacy, will be a tremendous asset to the practice of the future. After all, the future is coming, and it will be amazing! ✦

Larry Emmott, DDS, is a certified HIPAA professional and a practicing dentist. He has written three books on using technology in the dental office and is a featured contributor to the American Dental Association book, "Expert Business Strategies." To comment on this article, email *impact@agd.org.*