



AND THE LAW

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SOCIAL MEDIA AND HIPAA

Recently a dentist reached a resolution agreement with the Office of Civil Rights (OCR) in the Department of Health and Human Services (HHS) for a complaint regarding a violation of the Health Insurance Portability and Affordability Act (HIPAA). While this example occurred in a dental office, the lessons are equally applicable to pharmacies.

Patient Joan had filed a complaint with OCR alleging Dr. Smith's dental practice had impermissibly disclosed her protected health information (PHI) on Yelp®. While we do not have access to verbatim quotes, it is not difficult to infer what happened. Jane had left a review of Dr. Smith's practice and her experience during her last visit. Presumably it was not a positive review and in response, Dr. Smith's office included her last name, details of her treatment plan, and insurance and cost information for her treatment in their response to her review. While this information might be useful to defend yourself against a negative review, HIPAA prohibits the disclosure of such information except in certain situations. In response to the disclosures, Jane filed her complaint with OCR. During

the OCR's investigation, it was discovered that Dr. Smith's office had disclosed similar information in a number of responses to other patients' reviews. To resolve the matter, Dr. Smith's office agreed to a Corrective Action Plan and paid HHS \$10,000.

Social Media can be a great way to increase a pharmacy's visibility and promote the many goods and services it provides. The trap for the unwary is the ease at which messages can be created and posted. The utility of personal devices today makes it very easy to take a picture and post it with a caption in seconds.

In this case, the dentist disclosed PHI in response to a negative review. While we might all say we would not do something like that, the ease of posting on social media can cause us to quickly do something without fully thinking it through. If, for example, you wanted to post a picture of one of your staff members, it is easy to take a quick picture. You are focused on your staff member and whether they blinked or their smile looks good. You may not notice that there is a patient in the

background, or a computer screen that legibly shows a patient's profile, or the staff member is holding a prescription with the patient's name and medication clearly visible. Any of these situations would be a HIPAA violation. Similarly, even taking pictures of your facility for your website might disclose PHI if the photos are not carefully staged and edited.

You should also have a policy for your staff regarding photos in the pharmacy and posting to social media. Pictures from someone's birthday party that inadvertently disclose PHI could be posted on an employee's Facebook page. The employee is thinking about fun and focusing on the celebration, not the counseling session going on in the background.

The same temptations for a quick and easy post exist for your patients also. You and your staff should be alert for patients, or even just persons loitering, who are using their phone to take pictures or video in the dispensing or counseling area. These people are giving much less conscious thought to protecting PHI than your staff. Your diligence in protecting privacy will be beneficial in your defense when an errant posting slips through.

What should you do in the event that PHI is posted on social media, whether it is by pharmacy staff, patients, or someone else? If a posting was made by the pharmacy staff, it should be taken down as soon as possible. Documentation of how the incident occurred and your corrective actions should be made. A patient can disclose their own PHI to whomever they choose, but they cannot disclose someone else's PHI. Disclosure of someone else's PHI by either a patient or a third party

necessitates a call to the poster asking them to remove the PHI. It would be wise to advise a patient that disclosing their PHI to the world is probably not a good choice. Thorough investigation and documentation of all incidents should be made and retained. You will need to consult state and Federal requirements to determine who, if anyone, is required to be notified of the incident.

Social media is a great tool to market and promote the services of your pharmacy. As with any tool, careful consideration of how it is used is crucial. Bad publicity from disclosing PHI on social media could be crushing to your practice. Use social media wisely and it is worth its weight in gold.

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