

HIPAA and Social Media

Best Practices for Hospitals Case Scenarios – Q and A

July 21, 2015

Presented by:

Stacy Harper, JD, MHSA, CPC

for



Disclaimer

The information provided is for educational purposes only and is not intended to be considered legal advice or create an attorney-client relationship.

Opinions expressed are those of the speaker and do not represent the opinions or position of Kansas Hospital Association, the Kansas Association of Health Care Communicators or Lathrop & Gage LLP.

Polling Question

Does your hospital discuss social media during new employee orientation?

Results below reflect hospitals responding during the Webinar.

- Yes – 61%
- No – 16%
- I Don't Know – 23%

Scenario 1



On Duty ED Nurse Ali

September 21 at 5:23pm · 👤

On cloud nine! Best day ever!!!

Like · Comment · Share



Nurse Jane, EMT Micheal, CNA Jackie, Nurse Susan, and 25 others like this.



ED Provider Mike People often say that when they work with me. ROFLMAO

September 21 at 6:15pm · Like · 👍 2



ED Nurse Ali What are you giving your coworkers to make them feel so high?!? 😊

September 21 at 6:19pm · Like



ED Provider Mike Excitement! Thrills! Real live ER adventures!

September 21 at 6:35pm · Like · 👍 2



Paramedic Joe Your Welcome. Welcome to our world. [Redacted] should be proud!!

September 21 at 9:23pm · Like · 👍 1



Floor Nurse Mary Ellen You're just excited because you got to see me, aren't you?

September 22 at 12:45am · Like · 👍 1



Nurse Florence Had a good time in the ER?

September 22 at 6:10am · Like · 👍 1



ED Nurse Ali Haha **Mary** every day I see you is a good day! **Flo** more like a good day on the ambulance haha

September 22 at 9:38am · Like · 👍 2



Write a comment...



Polling Question

What is your reaction to these posts?

Results below reflect hospitals responding during the Webinar.

- inappropriate and violates HIPAA – 10%
- inappropriate and violates other laws – 4%
- may be prohibited by hospital policy – 58%
- Allowable – 28%

This post is probably ok. Doesn't violate HIPAA (unless there is some unique situation in a small community. The decision to ban under policy should be balanced by limitations under the NLRA.

Scenario 2



Polling Question

What is your reaction to these posts?

Results below reflect hospitals responding during the Webinar.

- completely inappropriate and violates HIPAA – 73%
- completely inappropriate and violates other law – 0%
- may be prohibited by hospital policy – 17%
- Allowable – 10%

Depends on the relationship between the employee and the patient. If friends outside of work, post is probably ok. If only contact is through work, and knowledge of the pregnancy was related obtained through the hospital, it may be a HIPAA violation. This is one of the risks with “friending” patients. This would apply if patient uses real name or a pseudonym.

Scenario 3



Polling Question

What is your reaction to these posts?

Results below reflect hospitals responding during the Webinar.

- completely inappropriate and violates HIPAA – 79%
- completely inappropriate and violates other law – 0%
- may be prohibited by hospital policy – 11%
- Allowable – 10%

This post is problematic UNLESS there is a special family/friend relationship. Did the employee find out about the death because of work, or because she knew the person and family/friend notified her?

Q1 – Is a dead person protected by HIPAA? A1 – Yes for 50 years post death.

Q2 – If only one person discloses information, are all participants in the chat implicated?

A2 – Maybe.

Q3 – What about a closed Facebook group? A3 – Even private groups and private messaging through Facebook are not considered “secure” under HIPAA.

Scenario 4

Which of the following post(s) is a hospital permitted to **prohibit** in its social media policy?
Results below reflect hospitals responding during the Webinar.

- So cool! Met Taylor Swift during my ER shift today! – 78%
- Massive car wreck resulted in a busy day. Managed to discharge two of the patients, but prayers are needed for the family of an 18 year old kid. – 86%
- Long day. Please wear your seatbelt!!! – 12%
- I hate my job! Mandatory overtime results in double shifts, no breaks and tired nurses! – 45%

First bullet (if Swift is a patient) and second bullet (probably gives enough information to be identifiable) can be banned. The third bullet does not disclose any PHI and is unlikely to fall within the scope of a hospital policy. The fourth bullet cannot be banned under current NLRB guidance.

Polling Question

Does your hospital educate employees about the goals of the organization's social media strategy? *Results below reflect hospitals responding during the Webinar.*

- Yes – 26%
- No – 60%
- I Don't Know – 14%

Scenario 5

No polling was available on this slide.

A patient posts to the hospital Facebook page detailing her recent surgery and complications with her blood sugar. She praises the hospital staff and the care she receives. At the end of the post, she mentions that her blood sugar has stabilized. Which of the following are permissible responses under the law?

- Respond to the post publically: “We appreciate your comments and are glad to hear you are doing well. Our hospital strives to provide great care to our community.”
- Respond to the post publically: “We appreciate your post. The nurses on the med-surg floor are so happy to hear that your blood sugar has finally stabilized.”
- Respond to the post through private message: “We appreciate your comments and are glad to hear you are doing well. Our hospital strives to provide great care to our community.”
- Do not respond. Have the post removed from your Facebook page as it is a disclosure of PHI.

“Private” messaging through Facebook is not secure. If the post involves disclosure of PHI by the hospital, it should not be done through Facebook (public or private) without patient’s written authorization. From pure HIPAA compliance, options 1 or 3 may be acceptable, but hospital policy may prohibit 1 based on risk.

Scenario 6

A patient you have been caring for in outpatient rehab for the last six months sends you a friend request on Facebook. You:

Results below reflect hospitals responding during the Webinar.

- Decline the request – 30%
- Decline the request, but send the patient a private message explanation – 38%
- Accept the request – 27%
- I don't have a Facebook account – 5%

HIPAA does not have any requirements regarding “friends” on Facebook. Can create risk for improper, unsecure conversations. Discretion to hospital policy on how to manage the risk.

Polling Question

Can a hospital solicit positive experiences or photographs from patients to display on social media? *Results below reflect hospitals responding during the Webinar.*

- Yes – 81%
- No – 7%
- I Don't Know – 12%

Yes you can solicit positive experiences and photographs. Must have full patient authorization consistent with HIPAA requirements if the Hospital posts the information.

Scenario 8

Your hospital hosts a community health fair, open to the public and attended by hundreds of people. Your marketing department takes dozens of pictures and wants to post them on social media. *Results below reflect hospitals responding during the Webinar.* You:

- Obtain written consent from all in the pictures (employees, patients and visitors) prior to posting – 30%
- Obtain written consent from all patients in the pictures prior to posting – 33%
- Posting the pictures is OK if the hospital is not billing for services – 32%
- You should NOT post anything – 5%

HIPAA only applies to the extent a photograph would disclose information regarding health care provided to an identifiable patient (billing for the service is irrelevant). Outside HIPAA, Kansas law recognizes a claim for “invasion of privacy.” The first bullet would reduce the risk of a privacy claim and provide strong defense. Chamber events and other non-treatment events may be less likely to involve an expectation of privacy and have lower risk of an invasion of privacy claim.

Q1 - What if a patient takes video and posts to social media without hospital or employee’s consent? Can the Hospital take action to remove?

A1 - The hospital can request removal, but this can be difficult to force.

Resources

Online at www.kha-net.org, click on communications, social media

- Template Consent Form
- Sample Social Networking Policy
- A Hospital Leadership Guide to Digital and Social Media – AHA
- #kansashospitals



Stacy Harper

Lathrop & Gage LLP

sharper@lathropgage.com

913-451-5125

