



Social Media

And the Intersection of First Amendment
Rights and Confidentiality in Health Care

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Presenters



First, I must warn you that anything you say may be written down and used to assist you.

Why This Topic?

At the end of this presentation, you will be able to:

- Value a patient's right to confidentiality in health care.
- Discuss the ethical obligations that our profession feels we owe to our patients surrounding confidentiality.
- Understand how HIPAA laws impact us as PTs, PTAs, or Students.
- Understand how the First Amendment may or may not protect our individual free speech rights in this context.
- Appreciate the risks of which social media participation can expose us as individuals and professionals.
- Identify the professional benefits of responsible social media participation.

Objectives

- Why are we called upon as health care providers/students to keep issues of our patient's health confidential?
- What would happen in a world in where confidentiality in health care was not an expectation?



The Ethics of Confidentiality

- Maintaining confidentiality shows a respect for the bioethical principle of patient autonomy.
- Autonomy is the right that we recognize patients have to make their own informed health care decisions.

Patient Trust = Open Communication

Open Communication = Accurate Diagnoses

Accurate Diagnoses = Patient and Societal Benefits

The Ethics of Confidentiality

- Code of Ethics for the Physical Therapist
 - **Principle 2: Physical therapists shall be trustworthy and compassionate in addressing the rights and needs of patients/clients.** *2E. Physical Therapists shall protect confidential patient/client information and may disclose confidential information to appropriate authorities only when allowed or as required by law.*
- Physical Therapy Core Values:
 - **Altruism:** Placing the clients needs above your self interest
 - **Compassion:** The desire to identify with another's experience; a precursor to caring
 - **Professional Duty:** The commitment to meeting one's obligations when serving individuals, the profession, and society.

The Ethics of Confidentiality



THAT IS WHAT OUR PROFESSIONAL ETHICS HAVE TO SAY

What does the law have to say about a
patient's right to confidentiality?

- History of the Law
- Parts of the Law
- Definition of PHI
- Consequences for Violation



HIPAA

- History of the Law
- *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*
- Is all speech protected?

First Amendment



THE RISE OF SOCIAL MEDIA

Or, where you should not pit your First Amendment rights against a patient's right to confidentiality

- As of May 17, 2012, one in every 5 page views the US occurred on Facebook.com.
- In 20 minutes, 1,323,000 photos are tagged and 1,851,000 status updates are entered.
- 71.2% of all US internet users are on Facebook, and 1 in every 13 people on earth.
- The Facebook.com audience is 56% female, 44% male.
- There are more than 250 million users currently accessing Facebook through their mobile devices.
- Facebook.com is the top social networking site in the US, Canada, UK, Brazil, France, Australia, New Zealand, Hong Kong, and Singapore markets. (#1 overall website)
- The average user has 130 friends.



Some Facebook Facts^{1,2}



- There are over 500 million accounts on Twitter.
- There are over 100 million *active* users, of which 50% log in each day.
- There are over 175 million tweets sent each day.
- The top 3 countries in terms of accounts are the US, Brazil, and Japan. If Twitter were a country it would be the 12th largest in the world.
- Lady Gaga has the most followers at 19,341,413.
- There are 11 new Twitter accounts added every second, or 950,000 new accounts added each day.

Some Twitter Facts³

My Opinion!
My Perspective!
My Struggles!
My Successes!



Cases are divided into some distinct categories.

- Cases where health care workers lose their jobs
- Cases where health care workers pay fines
- Cases where health care workers go to jail

Legal Cautionary Tales

- PT practice is both personally and professionally challenging, making for both rewarding and frustrating moments shared with our patients.
- Traditionally, we have leaned on professional peers, friends, and families to help us reflect and debrief after a difficult or inspiring patient experience.
- Too often, social networking sites are readily accessible and are our go-to environment to share experiences and attempt to cope with the rigors of life...including our workday...with an immediately empathetic audience.

Why the temptation?

- Ethical or legal sensitivity may be an issue with PT/A students when it comes to the boundaries of patient confidentiality on social networking sites, but this sensitivity is not always lacking.
- Our brain may comprehend that it is wrong to post or tweet obviously confidential details about our professional day, but often times the lines on how far is too far are blurry.
- It can also pose an ethical concern to post things about yourself that call into question your ability to provide sound professional or clinical decision making.

Is it that we don't know better?



Case in Point...

- There are benefits to be realized. What are some ways in which Social Media in Health Care be used responsibly in health care situations?

The Flip Side: Benefits

Is it appropriate to post the following on Facebook?

1. “Wow! I just saw Mitch Daniels in the ER. Judging by the road rash, I think he may have had a motorcycle incident!”
2. “I am walking into the OR to see an actual total knee replacement...wish me luck that I don’t pass out!”
3. “I got to see a local celebrity’s ankle fracture today...but I can’t tell you who because HIPAA might find me!”
4. “Bed bugs found at my workplace. Again. Ugh!”
5. FB event created by you for medical fundraising for one of your patients.



Thumbs up/Thumbs Down

- Many Health Care entities and Academic Institutions are creating organization-wide policies designed at defining what is not tolerated in terms of social media use.
- Policies attempt to govern both at-work and off-site behavior.
- Policies seek to mitigate liability risk for the institution in the event of a breach of confidentiality by an agent of the institution.
- Key to this risk mitigation is education and enforcement.

How is this being addressed?

- Follow all institution policies on social media use to the letter.
- Do not post anything in which you question whether it goes too far. Err on the side of caution.
- Remember to ask yourself how your posts portray you professionally to patients/clients, caregivers, and peers. Does your post possibly alienate a group with whom you are required to exercise unbiased sound clinical judgment?
- Remember that as a professional, you are an agent representing your school, employer, and profession...not just yourself.

Tips for Responsible Use

1. Facebook Press Statistics, 2012.
2. Experian Hitwise via ABC news report, May, 2012.
3. <http://www.socialmediaforlawfirms.com/2012/06/20-awesome-facts-about-twitter-2012-edition/> statistics as of June 15, 2012.
4. Department of Health and Human Services Website. Accessed September 4, 2012.

References
