



**Legal Issues when using Social Media in Research**

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**Social Media in Research**

- Get IRB approval
  - Including for use in recruitment
  - Specific authorizations from study participants required unless waived by IRB
  - IRB may require specific information about risks and benefits of participation in social media for research purposes within the consent process




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**CCHMC Social Media Policy**

- You are responsible for the content
- Act within the scope of IRB approval
- Follow our other policies and standards of conduct




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### Privacy Concerns

- PHI – individually identifiable health information
- Health Information – relates to an individual’s health or condition, or the provision of or payment for care
  - Past, present, or future
  - Mental or physical




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### Privacy Concerns

- HIPAA identifiers -- of the individual or relatives, employers, or household members
  - Name
  - Geographic subdivisions < state (maybe 1<sup>st</sup> 3 digits of zip code)
  - All elements of date except year (cannot use year if individual >89)
  - Numbers -- phone, fax, SSN, MRN, health plan, account, certificate/license, vehicle or device serial numbers or identifiers, license plate numbers
  - E-mail, URLs, IP address numbers
  - Biometric identifiers (finger and voice prints) and full-face or comparable images
  - Any other unique identifying number, characteristic, or code (except for a re-identification code unrelated to the individual’s information)




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### Privacy Concerns

- Review the platform’s Privacy Policy – but is it subject to change at the discretion of the social media platform?
- You may not be able to transmit PHI securely in compliance with HIPAA
- A disclosure of information on a social media site IS a disclosure of information at least to the company that runs that site, even if you are using a private messaging function




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### Privacy Concerns

- Understand the social media platform's policies
- The social media platform may also collect personally identifiable information about its users for its own purposes (marketing, advertising, etc.)
- Look for age or other restrictions set by the social media platform



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### CCHMC Social Media Policy

- Be professional – and maintain professional boundaries
- Licensing boards will evaluate your social media conduct from the patient perspective



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### Licensure Risks

- Most medical and nursing boards have received reports of on-line professionalism violations and have taken disciplinary actions in response
  - Inappropriate patient communication
  - Inappropriate practice (e.g. prescribing without an established clinical relationship)
  - Misrepresentation of credentials



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### Licensure Risks

- State medical board survey
  - 34 of 48 responding (71%) have held disciplinary proceedings in response to reports of on-line professionalism concerns
  - 27 of 48 (56%) have taken serious disciplinary responses (license restriction, suspension, or revocation)

Greyson et al., JAMA 2012; 307 (11): 1141-42.
- State nursing board survey
  - 26 of 46 responding (57%) have taken disciplinary action (censure, letter of concern, conditions placed on license, suspension) based on reports of on-line patient privacy violations

National Council of State Boards of Nursing, 2010.




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### Licensure Risks

- National and state organizations may have guidance documents
  - Federation of State Medical Boards Model Policy Guidelines for the Appropriate Use of Social Media and Social Networking in Medical Practice (2012)
  - Ohio State Medical Association Social Networking and the Medical Practice: Guidelines for Physicians, Office Staff and Patients (2010)




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### Risks to Study Participants

- Social media communications could also have unanticipated consequences for the study participant
  - Employment disputes
  - Domestic relations disputes
  - Defamation claims




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### CCHMC Social Media Policy

- Do not provide patient-specific health care advice via social media
- If a patient or family member posts clinically relevant information, you may have a duty to act – and may face professional malpractice allegations for failure to do so



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### Lingering content

- On-line postings may be – or become – available to a broad audience for a long time
- Social media posts are discoverable – and may be obtained directly from the social media platform
- You may have a duty to update your on-line content



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### Be careful what you “like”

- FDA warning letter to company that , among other things, “liked” a consumer testimonial on Facebook
  - Consumer posted favorable comments on Facebook regarding use of company’s drug for unapproved purposes
  - Company “liked” the post
  - FDA noted marketing and misbranding concerns



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**Contact Information**

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Need to report a compliance concern?  
Integrity Helpline at 1-866-856-1947 or cchmc.ethicspoint.com



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