How Off-Duty Statements Create On-Duty Liability

Urgent Message: There is effectively no right to "free speech" in a private employer-employee relationship. That means private healthcare employers have the authority to terminate staff whose off-duty statements violate professional ethics or harm the organization's reputation.

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In today's polarized political climate, the line between private citizen and public professional hasn't vanished, but social media has made it dangerously easy to cross—often without a second thought regarding the professional consequences.

Increasingly, healthcare workers are voicing inflammatory opinions online—sometimes even while wearing their scrubs. But what happens when a worker's off-duty digital commentary contradicts their on-duty oath? Specifically, when a licensed professional makes public pronouncements that alienate patients, how does this create a professional liability?[1,2,3]

The Oath to Do No Harm

At its core, clinical licensure requires compassion for all patients. When a provider publicly wishes harm upon people—regardless of the political context—it fundamentally undermines their fitness to offer "care."

Moreover, clinicians are held to a legal standard of care regardless of a patient's beliefs or standing. When a provider's expressed biases suggest they might deviate from this standard, employers must act. For instance, in 2020, the Ohio State Medical Board permanently revoked the license of a physician who was terminated from 2 residency programs after old antisemitic tweets surfaced—including a post in which she threatened to give Jewish patients the wrong medications.[4,5]

Similarly, in January 2026, a labor and delivery nurse at Baptist Health Boca Raton (Florida) Regional Hospital was terminated after a TikTok video appeared to show her making graphic, violent comments about White House Press Secretary Karoline Leavitt, who had recently announced her pregnancy.[6]

These are not just public relations problems. They

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are serious liability risks. What message does it send to the community if a healthcare employer retains staff who have wished harm upon patients, even in jest? Worse, consider the legal exposure: If an adverse outcome were to occur with a patient from that targeted group, would any jury believe it was unintentional?

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Federal Law Protects Private Employers

A private employer has the right to restrict a private employee's use of social media and to discipline the employee when he or she makes statements that violate the policy, especially when the statements may put the employer in a bad light. Nothing "limits a private employer's ability to discipline employees for expression."[7]

Courts have noted that while the First Amendment of the Constitution protects individuals from government restraint on their freedom of speech, it does not restrict private entities, such as employers, from imposing limits upon an employee's public statements.[8] It's not uncommon for employers to place restrictions on employee speech. However, courts have established that a state cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression.[9]

The primary distinction is public vs private employment. Many healthcare professionals mistakenly believe that because their employer accepts federal funds (like Medicare and Medicaid) or operates under strict state licensure, the organization is effectively a state actor bound by the First Amendment. However, courts have firmly rejected this view, establishing that even heavy government involvement does not transform a private business into a public one.

Note that the mere fact that a business is subject to state regulation does not by itself convert its action into that of the state for purposes of the Fourteenth Amendment. In *Jackson v. Metropolitan Edison Co*,[10] the Supreme Court stated that the "fact that a business is subject to state regulation does not by itself convert its action into that of the State."[10] In that case, the court held that a heavily regulated, privately owned utility was not a state actor.[10] The court explained that the "mere existence" of a "regulatory scheme" did not render the utility a state actor.[10] Nor did it matter whether the state had authorized the utility to provide electric service to the community, or whether the utility was the only entity providing electric service to much of that community.[11]

Malpractice Risk: Weaponizing the Joke

While offensive speech alone typically does not meet the strict legal definition of medical malpractice—which requires a deviation from the standard of care resulting in physical injury—it creates a serious vulnerability in the event of an adverse outcome.

Medical errors and adverse events are an unfortunate reality of clinical practice. In a standard malpractice defense, the argument is often that the provider did their best but a known complication occurred. However, if that provider has a history of inflammatory public statements—even if made "in jest"—that defense becomes weak.

Imagine a scenario where a patient suffers a complication, and the plaintiff's attorney introduces a social media post where the provider "joked" about harming that specific demographic of patients. At that point, a jury may not be looking at a clinical error. They may be looking at potential intent or malice. No amount of clinical brilliance can explain away a prior statement of hostility toward a patient group. What might have been a defensible medical judgment becomes an indefensible breach of trust, exposing the practice to possible liability and punitive damages.

From Negligence to Criminal Intent

Beyond the financial impacts of a malpractice verdict, criminal liability is a far more troubling prospect for the clinician.

In a standard medical error case, the legal system generally assumes the provider intended to help but failed due to negligence. However, if a provider has previously expressed a desire to harm a specific group of patients—even if they claim it was "in jest"—and then a patient in that group suffers an injury, that presumption of good faith vanishes.

Prosecutors can utilize those public statements as evidence of *mens rea* (criminal intent). As a result, an in-

correct dosage or a missed diagnosis is no longer viewed as an accident; it is viewed as the execution of a threat. For example, if a physician tweets about giving the "wrong meds" to a specific group and subsequently commits a medication error affecting a patient in that group, the physician could face charges of criminal battery or even manslaughter. The speech may contribute to a case being interpreted as a targeted criminal act.

Reputational Risk

Notwithstanding the seemingly limited risks of malpractice and criminal liability, the reputational risk to a healthcare organization is very real. Reputational risk is the result of negative public opinion and publicity concerning business practices. It can be a significant threat to a company's standing.[12] These risks can damage credibility, public image, market value, and stakeholder relationships.[13]

For example, consider a major healthcare system that relies on significant philanthropy from the Jewish community. The fear created by a provider's threats of physical harm—or even the perception of the institution's tolerance of antisemitism—has the potential to cost millions in lost services, revenue, and withdrawn financial support. Patients and donors alike will not sustain a relationship with an organization where they do not feel safe or welcome.

Misinformation and deceptive or incorrect interpretations of health information—both prevalent in social media—negatively impact public perception of healthcare. As such, they may dissuade people from seeking the preventive care and treatments they need.[14] Thus, assessing and managing reputational risk is non-negotiable. Private employers must recognize that when a provider's speech violates ethical or licensing standards, it is no longer a personal matter—it is a fundamental performance failure that justifies, and often necessitates, disciplinary action to protect the institution's integrity.[15]

Conclusion

While the First Amendment restricts the government, it does not strip private employers of the right to protect their reputations and their patients. Legal precedent confirms that nothing limits a private employer's ability to discipline employees for expression that violates company policy.

The bottom line is simple: A medical license is a privilege that places the preservation of patient trust above a clinician's impulse to post. If a clinician cannot distinguish between these elements, they may no longer be suitable for the profession. ■

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