



The Unsociable Network

■ JOHN SHUFELDT, MD, JD, MBA, FACEP

work with a non-physician professional in the emergency department. She is very intelligent, practical, and always helpful. There is only one small issue: many of her posts on her Facebook page are overtly anti-patient. She frequently rants about the stupid patients, how “bad” the clientele we treat act and how, ultimately, they get what they deserve.

Despite her obvious intelligence, she has not realized that what she posts is discoverable and possibly admissible in court.

I know of a number of providers who advocate the use of medical marijuana, and post frequently about their own marijuana use as well as the medical benefits of marijuana.

I know of at least one case where a defensible case was settled after the plaintiff’s attorney uncovered online posting of the defendant physician which, if made public, would have shined a very poor light on the physician and hospital.

I know what you are thinking. “My site is blocked to everyone except my closest friends; no one else can see what I post.” As Jerry Seinfeld once replied to Kramer, “Holy Moses, smell the roses!” I have had a number of computer savants tell me that they can “get into anyone’s Facebook page they want, no matter how well it is blocked.”

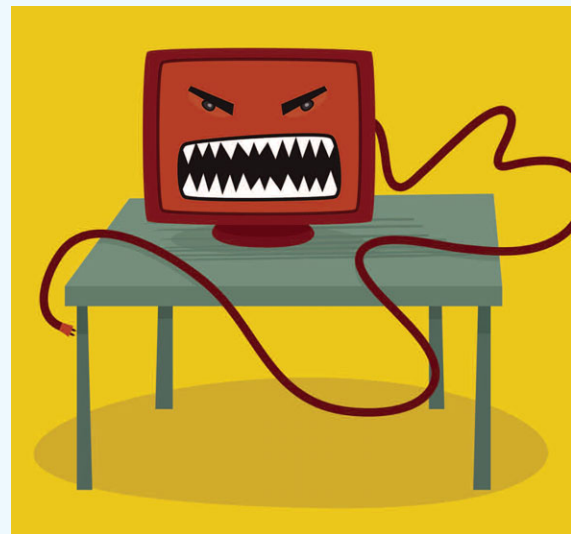
The point is this: What you may think is viewable only to your friends may in fact be easily discoverable and, once discovered, may be used as evidence against you in a medical malpractice trial or medical board disciplinary action.

Here are a couple of ways this could play out:

- You see a patient with low back pain. You take a thorough history, perform a complete exam, and document and discuss with the patient that you believe his pain is secondary to muscle spasm. The patient returns three days later and is ultimately diagnosed with an epidural abscess. The patient has a poor outcome and files suit against you, the urgent care center, and the joint venture partner hospital.



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Everything looks great for the defendants, though; the chart is well documented, the exam thorough, and the discharge instructions clear and time sensitive.

There is only one small fly in the Bengay: the opposing attorney found a “tweet” you posted complaining about drug-seeking patients with low back pain. Now, all bets are off. The opposition is going to blow up the “tweet” and project it in front of the jurors and attempt to argue that you have a bias (based upon your tweet) against patients with low back pain.

You eventually settle what would have been a very defensible case before trial.

- You are at a drug company-sponsored event with your group where there is an open bar. You rarely drink alcohol, and are not the one pouring the drinks so you wisely choose to have only a few vodka cranberries.

On the way home, you are stopped for not using your blinker before making a turn. The officer questions you about alcohol consumption; you respond honestly that you only had three drinks. Unfortunately, you fail the HGN (horizontal gaze nystagmus) test and the breath-

choice questions) and supplement the quiz with show-of-hands questions (“How many of you...?”).

Use this information to customize the presentation and provide feedback to your employer client. For example, you might ask everyone to write down “the one thing that your company should do to make your workplace safer and healthier.” Results from such questions can be an eye-opener for the employer and may lead to greater opportunities for your clinic.

Tip #7 Post results on your website. Why not ask the same questions at every worksite and publish the composite results (e.g., “Across 2,000 employees in Gotham City, 23% felt that poor communication with senior management was the number-one deterrent to optimal workplace health and safety”).

After awhile your “N” will be large enough to offer cross-tabulations comparing area companies by size or broad industry classifications.

The more other companies are exposed to such information, the more likely they will want your clinic to speak at their worksite.

Tip #8 Keep a few relief pitchers warmed up in the bullpen. If just one person is your go-to educator, your goal of one onsite presentation per week will quickly dry up. Thus, a goal of 50 programs per year could easily fall to only 10 programs per year, thus rendering your entire onsite education plan just 20% as far-reaching as it could be.

Tip #9 Place your talks in context. Remember Mark Twain’s famous idiom, “Tell ’em what you’re going to tell ’em, tell ’em, and tell ’em what you told ’em.” This structure should be central to all talks (and sales encounters, for that matter); place what you are about to say in the clearest of contexts and end every presentation with a brief synopsis of your key points.

Onsite education should be viewed as an outstanding opportunity for your clinic and an obligation to effectively serve your community. An educated and appreciative population will likely view your clinic in a better light, and an informed population is good for both your clinic and the community at large. Onsite education should be part of your clinic’s portfolio and will have the best chance to succeed when it’s offered with both forethought and careful planning. ■

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alyzer records a .09 and .095, which are both above the legal limit.

Your state medical board has explicit rules about self-disclosure, so you call and report your DUI charge. During your board interview, you honestly discuss your “typical alcohol consumption patterns,” which are actually quite conservative. However, during the board’s investigation, they find evidence on different social media sites where someone has tagged you in different pictures. Although these pictures are seemingly benign (vacation, ski trip weekends, birthday parties, etc), you are holding some form of an alcoholic beverage in the majority of them.

Now the board believes not only that you have a problem with alcohol, but also that you were not being honest with them during the investigation, which results in even further board actions.

Please wrap your head around this: *Everything* that makes its way to the worldwide web is discoverable and often admissible if the opposing attorney can make some causal link between your alleged actions or inactions and what you have posted. It may be as simple as making you out to be an uncaring or unsympathetic jerk in front of the jury. Although it may not be directly relevant, if part of the argument is that you did not take the time to follow up with the patient, the jury viewing you as uncaring will not bode well.

In cases where I am deposed as an expert, the opposing counsel often has every article I have ever written laid out on the conference table. I am sure that part of their goal is to intimidate me; however, the other part is to quote sentences out of context to me and see if I agree or disagree. If I disagree, the next phrase out of their mouth is, “Dr. Shufeldt, do you recognize this article? You should, you wrote it.” The only good news in all this is that it makes the Journal’s readership numbers go up. (To date, the only thing I regret is the “Checklist” article where I shared a picture of me holding a goose and wearing a dress at Mardi Gras.)

The final caveat is this: The bar for admitting evidence from social media sites is fairly low. You should not post anything which you would not want shown to a jury, your spouse, your partner providers, or your employer since it will be viewed in the worst possible light and in the worst possible way. ■