



What is the Liability for an Urgent Care Slandering a Competitor on Social Media?

Urgent message: While competition for patients among urgent care operators can be intense, speaking negatively of a competitor online can lead to unwanted liability.

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Competition between businesses can be intense. In some instances, comparisons between one company and another can lead to disparaging and inaccurate claims. This can result in unneeded liability for an urgent care owner. Here, we examine how the law of defamation in social media applies to urgent care centers and the rights and responsibilities of their owners.

In 2017, the owner of a St. Louis urgent care was sued by a rival urgent care provider for defaming the company on Facebook.¹ The fight between the two centers started innocently with a customer tagging the defendant urgent care in a Facebook post, commenting that they recommended their services. The owner of that urgent care responded with “Thank you. And by the way, we accept Medicaid and we don’t CT scan people unnecessarily.”¹

Even though the other urgent care went unnamed, the plaintiff had its attorney send a letter demanding that the defendant delete the posts. That set off the fireworks, and the defendant named its competitor in subsequent inflammatory online statements. The plaintiff obtained a temporary restraining order, and the posts were removed. But the fight escalated, with the plaintiff urgent care bringing an action alleging defamation and tortious interference, and seeking an injunction to bar further posts by the competitor.¹ The plaintiff claimed that its reputation was impacted negatively by the social media posts and sought an un-

specified amount of damages, attorney’s fees, and other costs.²

In addition to a possible defamation claim, urgent care owners may need to defend claims of tortious interference with existing contracts and prospective business relations, unfair competition, and false advertising.

Social Media and Defamation in General

There are two primary kinds of defamation—libel, which is *written* defamation, and slander, which is *oral* defamation. When an alleged defamatory statement is made online or through social media—Facebook, Twitter, LinkedIn, Yelp, or another application—it involves the written word. As such, it’s libel.³

As opposed to a libelous statement in a newspaper, a social media post creates a bit more complexity because the law depends on several factors:

- The state in which the victim resides
- The state in which the alleged defamer resides
- The “contacts” the defamer has had with the victim’s state, if any

The concern here is whether an urgent care owner can sue in his local jurisdiction. If the competitor is a national chain with its headquarters on the other side of the country, it may make it more difficult—but not impossible. A qualified attorney can help you with the best strategies and outcome.⁴

The Legalities

Although each state’s laws can be different, basically defamation is a false statement that is public and injurious to the victim’s reputation.⁵ To prevail in a defamation lawsuit, a victim must be able to prove that the statement was *false* (the truth is a complete de-



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Law Review

- Although state laws may differ, *defamation* is generally a false statement that is public and injurious to the victim's reputation. There are two primary kinds of defamation:
 - *Libel* is written defamation
 - *Slander* is oral defamation
- The statement is *public* when the content is posted on the webpage.
- "Injurious" in the business sense can mean loss of business or profits, but also damage to reputation. Regarding the latter, ask yourself whether a statement would cause the person's peers to think less of him.
- Defamatory statements made online or through social media (eg, Facebook, Twitter, Yelp) constitute libel because they involve the written word.
- An alleged victim must be able to prove that a statement was false in order to prevail in a defamation lawsuit; the truth is a complete defense.
- Alleged defamatory statements must be presented as fact, not a subjective opinion.
- Social media posts create a bit more complexity because the law depends on several factors:
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fense). The alleged defamatory statement must be presented as a *fact* and not as an opinion.⁶⁻⁸ The statement is *public* when the content is posted on the webpage. It doesn't matter if the website is read by a dozen people or it's on a Kardashian's Twitter feed seen by millions.

Finally, it's critical that the victim show *specific damages*. In the business setting, this is usually accomplished by providing evidence that the victim's reputation has been damaged, such as with a loss of business or lost profits.⁶⁻⁸

Untrue statements

On the other hand, some statements are so inherently injurious that a victim may not be required to prove *actual* damages.⁹ This is known as *per se* defamation. Some examples are statements that charge an individual or entity with an infamous crime or tend to subject it to "hatred, distrust, ridicule, contempt, or disgrace."¹⁰ Other examples include claims of being incompetent in the profession, of certain sexual conduct, or of having a "loathsome" disease.¹¹⁻¹³ These statements would likely be considered defamatory regardless of their veracity.¹⁴

Similarly, if an employee posts information that's partially true and partially false, she can be found liable for defamation. Perhaps the competition doesn't take military insurance: it would be dangerous to state that that the urgent care didn't care about the military and refused to treat them.

A good rule of thumb in judging if a person's reputation has

been damaged is if the statement would cause the person's peers to think less of him.

The Protections

You can protect your urgent care from a competitor's defamation lawsuit by posting only factually accurate statements. If you want to post something, be certain it's true before you post.¹⁵ Check your facts.

Even if a statement's true about a competitor, it still may not be the wisest thing to make it known. Consider your own company's reputation as you potentially tarnish another's. Just like words, images can also be defamatory.¹⁶ Don't alter photos or create memes to make another urgent care look bad.

Ask yourself: *What does it say about your urgent care if you knock down the competition?* Perhaps it's better to take the high road. Ethical marketing may produce tangible benefits for your urgent care business. There's a lot to be said for a provider that exhibits integrity. New clients will appreciate this, and your business will develop loyalty and increased customer retention. Referrals for your upstanding urgent care will also grow.¹⁷

Medical Ethics

In addition to the legal parameters of social media statements, healthcare owners and operators must also be bound by medical ethics that have traditionally discouraged disparaging competitors and acting in an unprofessional manner.

The 1969 AMA Judicial Council Opinions and Reports states that "[t]he practice of medicine should not be commercialized nor treated as a commodity of trade."¹⁸ Healthcare professionals have an ethical and legal responsibility to maintain their patients' confidentiality.¹⁹

With this in mind, urgent care owners, operators, and employees must understand their ethical responsibilities to their patients. More than a few Millennials and other young people will be working at your urgent care center. This means that their main mode of communication may be via smartphone and apps where stream-of-consciousness entries are the norm. Emphasize the importance of patient confidentiality, as well as their responsibility in representing the company in all comments, blogs, posts, and online communications in the best possible light and with the highest standards.^{20,21}

Takeaway

It may sound too easy, but common sense is a good gauge of how you should act or react to a social media post that mentions your urgent care. The Golden Rule is a good yardstick, as well.

If you or an employee is blogging or writing on a Facebook page or submitting comments on a competitor's website, review site, or other social media site, be certain that you have all your facts absolutely correct before posting your statement. Again, think about it ethically and consider whether to send the

statement at all.

When submitting posts or comments on social media, use extreme caution and avoid making any “gray area” statements that could be construed as defamation. While a statement may, in the end, not be judged to be defamatory, your business doesn’t need the trouble and expense of defending a lawsuit to find out.

If you believe that your business has been defamed online, contact a qualified attorney to discuss your legal options and the wisest course of action. A retraction and an online apology may end the matter quickly and to your satisfaction. If the statements are more severe and are causing damage, your legal counsel may suggest more aggressive action.

When considering posting something about a competitor, remember Abraham Lincoln. When Abe wanted to fire off a nastygram, he’d compose what he called a “hot letter.” He’d get all of his anger and hostilities out into a letter—then put it in his desk drawer until he cooled down. Then he’d write on the top of it: “Never sent. Never signed.”²² ■

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