



What Are the Legal Remedies to Stop Cyberstalking of Your Urgent Care Center?

Urgent message: Social media provides a platform in which patients, who perceive they're relatively anonymous, can bully or harass a business they feel has "slighted" them. To mitigate the cost of lost reputation and labor in countering online vitriol, urgent care operators need to know their rights and remedies for "cyberstalking."

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The customer is always right. Typically, this adage reveals itself when the customer isn't happy. The customer thinks they know what's best and that their answer is the right one—no matter what's logical in a situation or what they may be told.

Urgent care patients can become disgruntled over some aspect of the service experience and dissatisfied with the response of urgent care personnel. Some patients become "triggered" when they can't get the answer (or, in some cases, the prescription) they want. Rather than rationally working together to find a resolution, many of these individuals skulk away and take out their "revenge" online.

This is what is termed *consumer grudge*—a psychological state of maintaining a victim role and experiencing negative emotions associated with some hurtful offense.^{1,2}

A Real-Life Story

Bob visited an urgent care but was asked to pay cash for a nonemergent procedure after trying to use an out-of-state Medicaid card which wasn't accepted as payment at the facility. In fact, no medical provider in the Washington, DC area was going to accept an Alaska Medicaid card for the simple reason that there is no way to get paid on it.

If Bob had looked into the situation beforehand, he would have realized that trying to use an out-of-state Medicaid card is all but impossible. He hadn't lived in Alaska for nearly a year and should have secured Medicaid or health insurance at his new residence. Each state has its own Medicaid eligibility requirements, so he can't use his coverage when he's visiting the District of Columbia or anywhere outside of Alaska.^{3,4} It's like trying to pay with at the gas pump with your library card. It just won't work.

This is a reasonable explanation for the situation. However, at this point, Bob isn't reasonable and his enraged response is highly disproportionate to the actual "offense." He decides to dedicate much of the next few weeks posting hundreds of threatening comments, reviews, and emails about his perceived slight at the urgent care, which he describes as a travesty of epic proportion.

Now the urgent care operator is compelled to spend time, money, and effort to have Bob banned from Facebook and other social media sites. In the actual case, many staff hours were wasted cleaning up the false comments he obsessively posted.

All this because he thought he was entitled to use his Alaska Medicaid card in a DC urgent care.

Defamation is generally defined as any false statement that injures a person's status, good name, or reputation in the community.⁵ This definition certainly encompasses Bob's actions against the urgent care. Further, *cyber-smearing* is anonymously posting disparaging, defamatory comments,



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rumors, or statements about a company or their employees via the Internet.⁵

This article is designed to assist those in urgent care prepare to deal with this type of scenario before they're hit off-guard by what can be defined as *corporate cyberstalking*.⁶

“Print the harassing emails with the full email header, harassing instant messages, and private messages, texts, as well as harassing messages or defamatory messages about the urgent care facility. Note the dates and times of all harassment in hard copy and save all electronic evidence.”

How Does the Law Define Cyberstalking?

While each state has its own definition, as an example, Washington State holds that a person is guilty of cyberstalking “if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party:

- (a) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;
- (b) Anonymously or repeatedly whether or not conversation occurs; or
- (c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.”⁷

Illinois defines online stalking or cyberstalking as “repeated, unwanted social media contact.” This includes direct messaging, comments, replies, and any other form of social media communication to the victim.”⁸⁻¹⁰

However, an added problem can be the degree of anonymity when interacting online and the ability to cyber-smear. While the patient Bob in the example above was known to the urgent care, in many cases these cyber attackers will be passive aggressive, with the perpetrator hiding behind an anonymous screen name. And while social media companies enable comments and reviews to promote community and collaboration, a review site like Yelp can be overrun by unsubstantiated negative comments. While these sites typically have a mechanism for removing unsubstantiated negative reviews, resolution can take between three and five business days for the site's moderators to make

a decision. However, if a review doesn't meet Yelp's definition of inappropriate content, the comment will not be removed from the site.¹¹ The same is true with other popular sites such as Facebook and Google Reviews. If a disgruntled patient posts hundreds of reviews, it may take some time to remedy this situation, if a remedy is even possible.

How Can an Urgent Care Facility Protect Itself and Its Reputation from Cyberstalking?

A patient has a ready and accessible forum to make threatening or harassing posts and comments about the urgent care center, which can include excessive comments, false negative reviews, derogatory comments, spamming posts with vitriol, deleting or flagging posts, and attacking other innocent third-party patient-reviewers of the business.

Urgent care companies are all but powerless to halt cyber-smearing (anonymous cyberstalking) by an individual. However, they can prepare for this by having damage control mechanisms in place, which are critical to combatting these anonymous attacks.⁵

This type of behavior is clearly harassment, tortious interference in a business, intimidation—all of which are intended to harm a business's reputation, impede marketing, and intimidate employees. Posting fake negative reviews can ruin an urgent care's revenue and damage its business and clinical reputations.¹

The most difficult thing in the entire process may be resisting the urge to respond or retaliate. Doing so may actually do more harm than good, and exacerbate the situation, resulting in increased harassment and activity from the cyberstalker.

Legal remedies

Urgent care owners and operators should educate themselves on what actually constitutes cyberstalking and a cyberstalker's legal defenses.

Of course, a patient who is caught or acknowledges that he made such comments will immediately assert his First Amendment right to free speech.

In a 2018 case, a retired Air Force major challenged Washington State's cyberstalking statute.⁷ The Ninth Circuit Court of Appeals held that he could pursue his First Amendment challenge to the state's cyberstalking law. While the U.S. Circuit Court of Appeals ruled on a procedural issue, the plaintiff was free to challenge the statute.^{12,13}

Washington State's cyberstalking statute's constitutionality was challenged earlier this year, but the state court of appeals upheld the statute because its language closely mirrors the language in the telephone harassment statute, which has been upheld as constitutional.^{14,15}

Cyberstalking can constitute a legitimate threat, and Washington recognizes this and has provided a definition for litigation.

For example, the Washington Pattern Jury Instruction 2.24 includes a paragraph defining “true threat” as the following:

“To be a threat, a statement or act must occur in a context or under such circumstances where a reasonable person, in the position of the speaker, would foresee that the statement or act would be interpreted as a serious expression of intention to carry out the threat rather than as something said in [jest or idle talk] [jest, idle talk, or political argument].”¹⁶

Thus, in court, a victim company of cyberstalking can present evidence in the form of screenshots of the tweets, reviews, emails, or posts to demonstrate a claim. An urgent care should print out the harassing emails with the full email header, harassing instant messages, and private messages, texts, as well as harassing messages or defamatory messages about the urgent care facility on social networking sites. Note the dates and times of all harassment in hard copy and save all electronic evidence. In addition, bookmark the username and profile URL of the person harassing the business via social networking website(s).

In many states, you can file for a restraining order against a person engaging in stalking or harassment, even if there is no specific relationship with that person.¹⁷ An attorney can send a cease-and-desist letter which may be a first step, but a court order carries more weight and has immediate legal consequences if the individual continues his threatening behavior.

In addition, law enforcement has recognized the seriousness of this behavior. A victim can file a report with local law enforcement or file a complaint to the FBI Internet Crime Complaint Center IC3.¹⁸

Companies Must Protect Their Online Reputation

An urgent care facility can attempt to ban egregious users and delete their posts, but this may incense the cyberstalker enough for them to take additional steps against the company.

A new industry has evolved to address this type of issue. Online reputation management is the process of shaping the perception of a business or brand on the internet by using social media, press releases, and other information on your website.¹⁹

Takeaway

Cyberstalking involves the use of technology to make urgent care employees fearful or concerned about their safety. Disgruntled patients may engage in cyber-smearing, which is the anonymous posting of disparaging, defamatory comments; rumors; or statements about a company or their employees via the Internet.

While anonymous authors of such a smear campaign can be all but impossible to apprehend, urgent care facilities must

be vigilant in their monitoring of social media and customer communications and reviews. If the patient’s identity is known, an urgent care owner can contact law enforcement and leverage the state’s statutes prohibiting cyberstalking, as well as engaging legal counsel to attempt to enjoin the patient from further defamatory activity.

No urgent care wants to experience a high level of grudge-holding in the form of cyberstalking. In addition to taking legal action, an urgent care may consider a proactive public relations campaign to combat false information found on the Internet.²⁰ Online reputation management is vital in today’s online environment. ■

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