Hospital Procedures Broadcast via Social Media

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Practice Area: Health Law & Information Technology, Data Privacy and Security

Providers in the health care community are starting to use social networking mediums for promotion of their programs and public education. In fact, over 290 health care systems in the United States currently use a form of social networking, including several Wisconsin health care providers. [1]

This Bulletin provides a basic overview of the utility of using social networking websites to broadcast surgeries, and sets out some basic legal considerations related to this new trend.

Twittering, Facebooking and YouTubing
Social networking focuses on building online communities of people who share interests and/or activities, or who are interested in exploring the interests and activities of others. Most social networking mediums are web-based and provide a variety of ways for users to interact, such as e-mail and instant messaging services. Social networking mediums include Twitter, YouTube, Facebook, and blogs, and are used regularly by millions of people.

Not surprisingly, social networking has reached the health care industry – through both patients and providers. In October 2008, a patient "live tweeted" during a surgery to remove his varicose veins. In one tweet, he stated that he took a video clip of his doctor pulling the varicose veins out of his legs and would post the video on YouTube.[2] Similarly, the chief resident at Henry Ford Hospital in Detroit live tweeted during a surgery to remove a cancerous tumor from a man's kidney. The doctor tweeted the surgery to inform people that a tumor can be removed without removing the entire kidney.[3]

Social network-savvy hospitals also post information about surgical procedures on Facebook and YouTube. Mercy Health System in Janesville, Wisconsin, for example, tweeted about a surgery and provided links to a Facebook page with pictures from the surgery.[4] Staff members at Sherman Hospital in Elgin, Illinois also twittered about a laparoscopic hysterectomy, while other staff uploaded videos of the surgery onto YouTube. [5]

Concerns from Patients and the Health Care Community
Health care providers have received mixed feedback regarding the use of social networking sites as a medium for broadcasting live medical procedures. Supporters view the recording, photographing and "twittering" of surgeries as creating more transparency and as a way of relieving anxiety for people who may need to undergo a similar procedure. Opponents, on the other hand, characterize this type of social networking as a "PR stunt" or "grandstanding" by health care providers.

Regardless of the motivation behind health care providers' use of social networking sites, there are several factors to consider prior to undertaking this type of communication, including:

- Patient consent;
- Compliance with applicable confidentiality and privacy laws;
- Possible use of a YouTube video, Facebook picture, or Tweet in legal proceedings;
- Intellectual property concerns if videos or photos capture licensed programs on a computer screen or trademarked material;
- Safety concerns (maintaining a sterile environment, extra equipment becomes part of surgical field, etc.);
- Quality issues, such as the ability of an operating surgeon to effectively perform the procedure while fielding questions;
- Having a plan for what to do if there are unexpected outcomes, emergencies or other complications during the surgery;
- Compliance with providers' "no filming" policies or other similar policies.

Hospitals and health care systems that participate in or allow patients to share information via social networks have responded to these concerns in a variety of ways. Some hospitals incorporate information into patient-focused print materials or dedicate a portion of their website to social networking topics. Others develop policies that address social networking and distribute to staff information about participation requirements. Hospitals that perform live surgeries should also obtain the patient's consent prior to the procedure and keep all patient personal information private, in accordance with applicable law.[6] Additionally, health care systems or medical staffs should develop best practices and guidelines that require that the operating surgeon is not personally updating the networking medium or doing so only when it is safe to do so without compromising the patient's safety or the sterile environment. Measures to minimize the surgical teams' distraction should be implemented. In live surgeries, the tweeting or uploading of photos and videos is done by a person or team of people whose only purpose in the operating room is to update information—the surgeon performing the procedure should generally not send updates.[7] If the operating surgeon answers questions during the procedure, the question/answer situations and approach should be similar to when an operating surgeon answers questions presented by medical students observing a procedure.

Finally, providers should have a "plan B" that addresses how the live or recorded information sharing will be managed if there are complications or unexpected events during the surgery. For example, the manager of Web Services at the Henry Ford Health System has stated that if something unplanned occurs during a live surgery, the communications team "goes to commercial," and informs the public of the outcome at a later time.[8] These measures are designed to avoid a scenario where a patient's family learns through a live feed instead of through the patient's doctor that there is a problem.[9]

Conclusion

Social networking in the health care context is a relatively new development. There is little information available regarding either its utility or the possible legal issues associated with this relatively new practice. If a health care provider is considering using or allowing the use of social networking sites, patient consent, privacy, evidentiary and intellectual property concerns and safety are issues to consider and manage. The health care provider also should consider developing, reviewing and/or updating policies, including policies regarding videotaping and photographing to address the evolving technologies and communication vehicles that both patients and providers wish to use. The attorneys in von Briesen & Roper's Health Care Practice Group can provide more information about these considerations and implementation strategies.

Additionally, we note that this Bulletin does not discuss the impact of other forms of technology on the health care community, such as online medical records or a patient's personal blogs. If interested in learning more about these other forms of technology and their legal implications, please contact us.

[1] Ed Bennett, "Hospital Social Network List," June 15, 2009,

[2] Brian Dolan, "Twitter Surgery Timeline: 8 Months of OR Tweets," May 26, 2009

[3] Elizabeth Cohen, "Surgeons send 'tweets' from operating room," February 17, 2009

[4]Mercy Health System—Photos, facebook.com, (uploaded June 29, 2009)

[5] Chicago Breaking News Center, "Elgin Hospital First in Ill. to Twitter Surgery," April 2, 2009

[6] Id.; see also Credentialing & Peer Review Legal Insider, "Twittering at Aurora Health Care," July 2009 (patient's "face was never photographed or videotaped").

[7] Henry Ford Hospital, FAQ – Twitter Surgeries; see also Dolan, supra note 2.

[8] Leslie Cantu, "Hospital Brings Surgery to the People with Twitter," Washington Internet Daily, Vol. 28 No. 40, March 9, 2009.

[9] *Id*.

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