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Dentistry and the Law: Responding to Internet Criticism and HIPAA Considerations

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Responding to Internet Criticism and HIPAA Considerations

Question: I was alerted to a patient complaint about me that was posted online. This posting contained false and misleading information regard-

ing my diagnosis and treatment and contained insulting statements about me and my staff. It described me as uncaring, and my staff as rude and unprofessional, saying that we do not care about the comfort of our patients. Based on the details given in the posting and its timing, I can tell exactly who this patient is. The fact of the matter is that the services she wanted were cosmetic and I insisted that she pay her prior balance before I would undertake any future dental work (she has no dental insurance). In the past she needed an extraction and other critical services that I provided as a result of her very poor dental hygiene and certain lifestyle choices. I would like to respond to her online posting by setting the record straight. Is this problematic?

Answer: The internet has certainly made it easy for patients to publicly broadcast their criticisms. This is especially true in the case of health care professionals, where a number of websites facilitate the posting of patient “ratings” and the publishing of patient comments regarding diagnosis and treatment received.

Unfortunately for dentists and other health care professionals, the playing field is not level. Patients are free to provide whatever information they wish about either themselves or their dentist. They can post commentary — whether informed or uninformed — unrestrained by any privilege or other confidentiality restrictions. But such freedom is not the case for dentists and other health care professionals.

Generally, HIPAA allows the use of patient information only for treatment, payment, and health care operations purposes, unless you have obtained an authorization from the patient allowing your use of information for some other purpose. Since it is doubtful in the situation you describe that the patient is going to provide you

with a written authorization to use information in her patient record to refute what she has posted online, under HIPAA you would be prohibited from doing so.

Making matters worse, legal recourse in these situations generally is not possible. First, you would have to prove who posted the information, which would be difficult since most online postings are anonymous. Second, even in your case, where you are sure who posted the information, it is often difficult proving whether the statements are factual or statements of opinion. Factual statements are legally actionable, whereas statements of opinion are not. Finally, even if you could prove the identity of the poster and that the statements were factual, you would still have to prove how you have been economically damaged by the posting. Tying the posting to a specific loss of patients would be very difficult.

This is a frustrating situation to be in, with no satisfactory way to defend yourself using patient records. The best advice is not to respond to negative postings like this and instead manage your online reputation through your own internet advertising, your practice website, etc. Consider asking satisfied patients to provide online testimonials praising you for the care you provided. Most consumers will believe the majority of the opinions that they read, and they will see a single negative posting for what it is.

The good news is, if this negative posting stands alone among several (or many) favorable patient testimonials, it will likely be disregarded. ●

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