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Insights

Responding to Online Patient Reviews: Legal and Practical Considerations for Physicians

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In the age of immediate access to online platforms such as Google, Yelp, and Healthgrades, patients are able to share physician reviews, many of which are positive, but at times can be negative and potentially false. Negative reviews are damaging to a physician's professional and personal reputation, but the way a physician responds may have a longer and far worse effect. Before a physician responds to a negative online review, he or she should consider the legal implications.

Physicians and other health care providers should know that online sites with patient reviews are immune from most litigation under Section 230 of the Communication Decency Act (the "Act").[1] The Act was passed by Congress, in part, to promote the continued development of the Internet and encourage free market competition.[2] The Act sets forth that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."[3] In other words, in most instances, the Act holds online sites immune from liability for defamatory statements made by a third party.

Physicians should also be cautious in responding to online patient reviews to avoid an allegation of a privacy violation. Even if a patient has shared his or her own personal medical information online, physicians are still barred from disclosing patient information under HIPAA and state privacy laws. As a physician, it can be frustrating to receive a negative or false review. And yet, it is important not to defend treatment decisions online, or even acknowledge that a person who shared a review was a patient. Rather than responding directly to patient reviews, and becoming the target of a potential lawsuit, physicians may want to consider less defensive strategies. Healthcare providers tempted to sue patients for defamation related to online reviews and postings should also be aware of Indiana's so-called Anti-SLAPP Statute[4] which provides for prompt dismissal of litigation aimed at squelching free speech in connection with a public issue and an award of attorney's fees.

One alternative is to contact the patient by phone, or offer to meet with them in person to discuss the situation and reach a mutual understanding. If the patient was upset about a treatment decision, it may be helpful to re-visit the conversation and explain best practices or standards used by your practice, hospital, or other medical setting. Physicians can also take the approach of encouraging patient reviews from all patients, as increased positive reviews may lessen the impact of a few negative reviews. Finally, physicians should utilize social media and other online platforms to their advantage by keeping online profiles updated.

If you have questions regarding online reviews, HIPAA compliance policies, or other HIPAA-related questions, please contact Thomas N. Hutchinson at thutchinson@kdlegal.com, Alexandria M. Foster at afoster@kdlegal.com, or any other Krieg DeVault attorney in the Health Care Practice Group.

1 47 USCA § 230 (2018).

2 47 USCA § 230(b)(1-2) (2018).

3 47 USCA § 230(c)(1) (2018).

4 Indiana Code § 34-7-7-5. “SLAPP” is an acronym for “Strategic Lawsuits Against Public Participation