

## **Fired for Using Facebook: Law, Ethics, and Professionalism in the Use of Social Media**

**Audrey Harris Neonatal  
Conference of Northwest  
Arkansas  
Fayetteville, Arkansas  
September 13<sup>th</sup>, 2018**

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Professor of Pediatrics  
CWRU School of Medicine  
Director  
Rainbow Center for Pediatric Ethics  
Rainbow Babies & Children's Hospital  
Cleveland, Ohio




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**-I have no conflicts of interest to disclose  
-I will not be discussing off label use of any  
drugs or devices  
-This activity does not have any commercial  
support**




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## **Objectives**

- Understand how social media is being used by health care providers personally and professionally
- Identify professional liability risks associated with the use of social media
- Discuss liability issues related to videotaping during patient care

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### Case 1 - Tweets

A Pediatrician is frustrated by a mom who demands that the hospital provide free diapers and formula. She tweets that she hates "lazy, freeloading parents who should get a job or stop having kids." Another parent reads this and is upset.



Adapted from FSMB Model Policy Guidelines on Social Media

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### Case 2– Facebook 'Friend'

Shortly after a 5 year old trauma patient who had been in the hospital for months is discharged, the mom asks to "friend" one of the PICU attendings on Facebook. The attending felt conflicted about the request but thought it was OK because the child was no longer his patient. The mom has never posted anything inappropriate, and only contacts the attending to wish him a happy birthday.

Adapted from FSMB Model Policy Guidelines on Social Media

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### Case 3 – The blurred line

A concerned parent notes that one of the resident physicians frequently describes "partying" on his Facebook page, which is accompanied by images of himself intoxicated. The parent begins to question whether the resident is mature enough to care for her child.

Adapted from FSMB Model Policy Guidelines on Social Media

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### Case 4 – videotaping a patient

A first-year resident films another doctor inserting a chest tube into a patient. The patient's face is clearly visible. The resident posts the film on YouTube for other first-year residents to see how to properly do the procedure.

FSMB Model Policy Guidelines on Social Media

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### Case 5 – videotaping by the family

A malpractice lawsuit is filed against a Pediatrician alleging improper resuscitation. The father had secretly recorded the resuscitation and the plaintiff's attorney wants to introduce the video as evidence.

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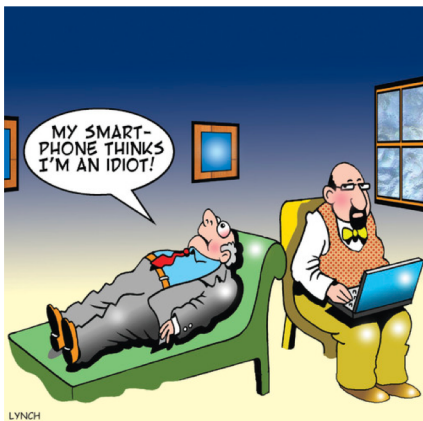
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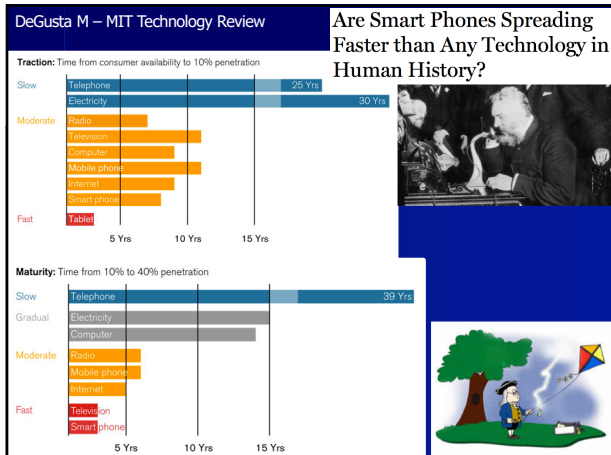
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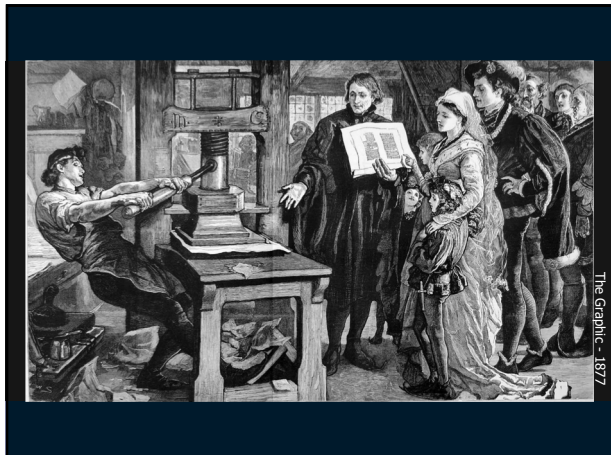
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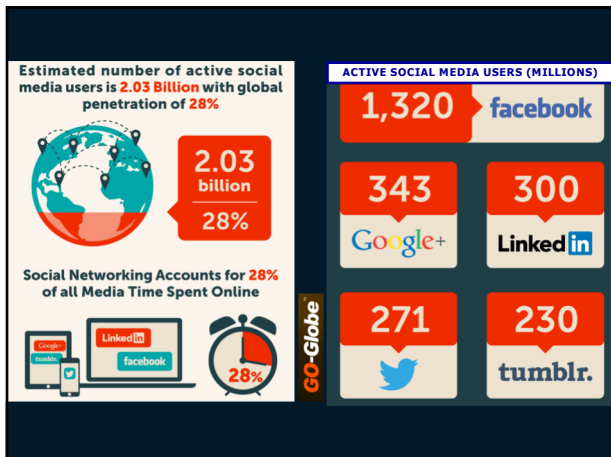
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- 13 years old - February 5, 2004
- 1.86 Billion monthly active users
- Average Facebook user has 338 friends
- Mobile daily access – 556 million people




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### Facebook 'Friend' Counts

- Younger users tend to have significantly larger friend networks than older users
- 27% of 18-29 year old FB users have >500 friends
- 72% of FB users over 65 years old have  $\leq 100$  friends



Pew Research Center's Internet Project Survey August 7 – September 16, 2013

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### Facebook User Dislikes

- Too much sharing – 36%
- Others posting things about you or pictures of you without asking permission – 36%
- Pressure to share too much – 24%
- Pressure to post popular content and get lots of comments/likes – 12%

Pew Research Center's Internet Project Survey August 7 – September 16, 2013

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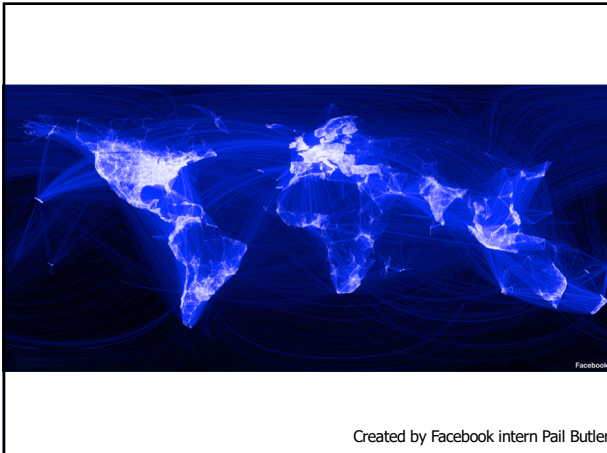
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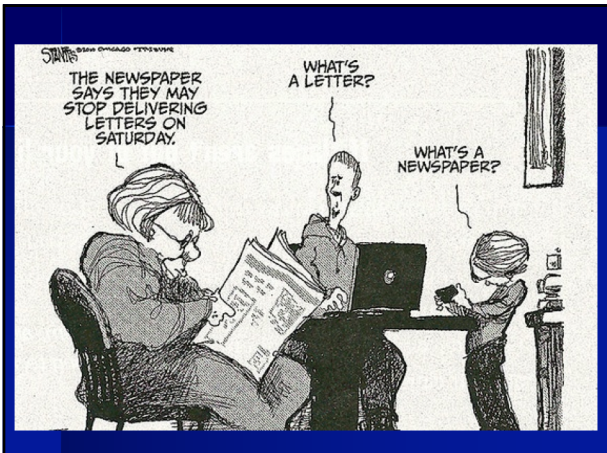
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## Benefits of Social Media

- Seeing photos or videos
- Sharing with many people at once
- Seeing entertaining or funny posts
- Learning about ways to help others
- Receiving support from people in your network
- Receiving updates and comments
- Keeping up with news and current events
- Getting feedback on content you have posted

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## Benefits of Social Media for Patients

- Engagement / participation
  - Support & Encouragement
- Social interactions
  - Celebrating / Venting
- Effects on disease-specific knowledge
  - Advice / Share information
- Psychosocial impacts
  - Feeling less isolated



J Biomed Info 2013;46:6,957

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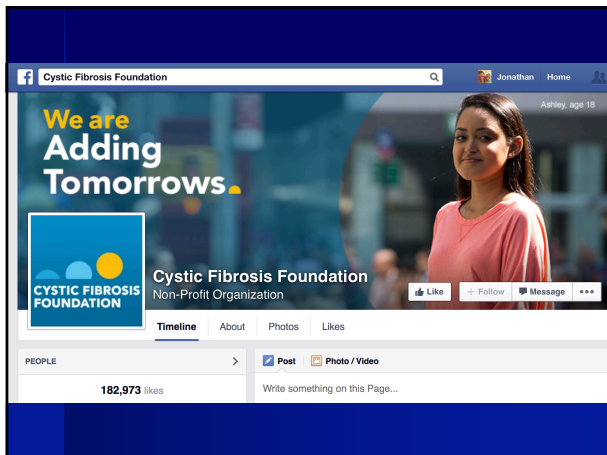
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**About Mally**

Mally is a beautiful, smiling, curious baby girl who was born on February 1, 2015. She is currently 3 years old and is the youngest of four children. Mally's mother, Jennifer, is a pediatric nurse and Mally's father, David, is a pediatrician. Mally's family is very active and enjoys spending time together. Mally is a very happy and curious baby who loves to explore and learn. She is a very sweet and loving child who is always smiling and laughing. Mally is a very special part of her family and she is loved and cherished by everyone.

**Safe Swaddling according to the American Academy of Pediatrics:**

I understand sleep is safest according to ABC and agree to sleep my child: \*

- ☐ ALONE- share the room, not the bed
- ☐ On their BACK- back is best for baby
- ☐ In a CRIB- bare is best, no pillows, no blankets, no bumpers

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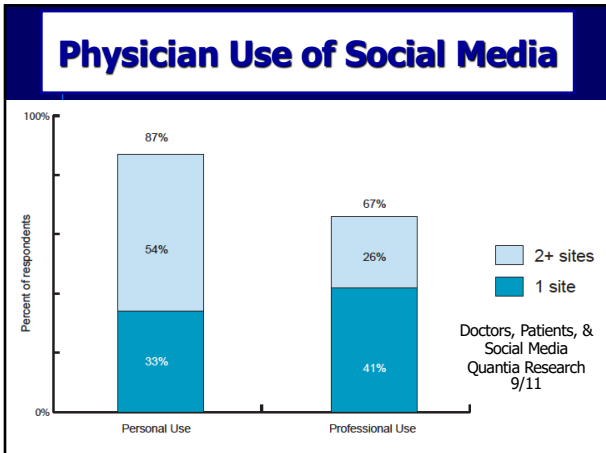
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### Potential Benefits of Social Media for Clinicians

- Learn from experts and peers
- Discuss clinical issues
- Discuss practice management challenges
- Share knowledge / expertise
- Advocacy

Doctors, Patients, & Social Media -Quantia Research 9/11

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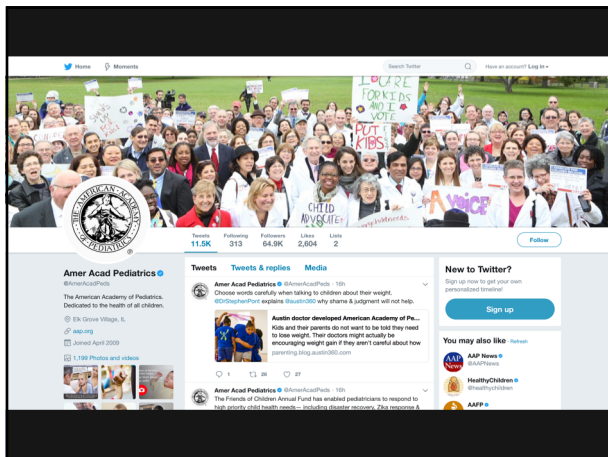
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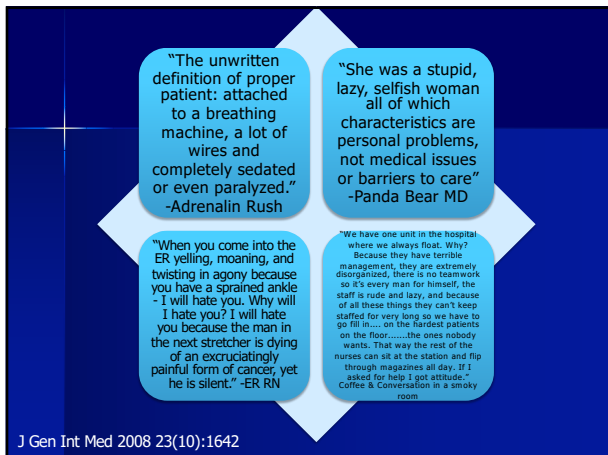
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J Gen Int Med 2008 23(10):1642

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## Online Posting of Unprofessional Content by Medical Students

- 60% reported a history of incidents involving students posting unprofessional content
- Who's reporting to the Deans
  - Other trainees - 57%
  - Non-faculty staff – 37%
  - Faculty – 35%
  - Patients or family members – 4%
- What types of incidents were reported
  - Violations of patient confidentiality
  - Use of profanity
  - Frankly discriminatory language
  - Depiction of intoxication
  - Sexually suggestive material

Chretien et al. JAMA 2009;302(12):1305

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### Unprofessional Medical Student Behavior Online – Sexually Related Content

- Provocative photographs of students
- Requesting inappropriate friendships with patients on Facebook
- Sexually suggestive comments

Chretien et al. JAMA 2009;302(12):1309

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### Unprofessional Medical Student Behavior Online – Disparage Affiliated School

- Profanity or other disparaging language in reference to specific
  - Faculty
  - Courses
  - Rotations
  - Classmates

Chretien et al. JAMA 2009;302(12):130

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## Unprofessional Medical Student Behavior Online – Intoxication or Substance Use

- Photographs of illicit substance paraphernalia
- Depiction of intoxication
- Students holding alcoholic beverages

Chretien et al. JAMA 2009;302(12):1309

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## Unprofessional Medical Student Behavior Online – Threats to Patient Confidentiality

- Blogs that describe clinical experiences with enough detail that patients could eventually be identified
- Posting patient details on Facebook

Chretien et al. JAMA 2009;302(12):1309

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## Confidentiality Breach

- Emily, a 20 year old nursing student
- Excited to be on her Pediatrics rotation
- Caring for Tommy, a 3 year old receiving chemotherapy for leukemia
- While Tommy's mom was at the cafeteria getting coffee, Emily asked him if she could take his picture
- Tommy smiled and said yes

National Council of State Boards of Nursing White Paper: A Nurse's Guide to the Use Of Social Media

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## Confidentiality Breach

- Emily posts the photo on Facebook, stating "This is my 3-year-old leukemia patient who is bravely receiving chemotherapy. I watched the nurse administer his chemotherapy today and it made me so proud to be a nurse."
- In the photo, Room 324 was easily visible
- Nurse from the hospital was browsing Facebook and saw the photo
- Reported to the hospital who contact the school

National Council of State Boards of Nursing White Paper: A Nurse's Guide to the Use Of Social Media

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## Confidentiality Breach

- While Emily never intended to breach the patient's confidentiality, it didn't matter
- Emily is expelled from nursing school
- The hospital faced a HIPAA violation
- The nursing program was barred from using the pediatric unit for their students

National Council of State Boards of Nursing White Paper: A Nurse's Guide to the Use Of Social Media

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## Online Posting of Unprofessional Content by Medical Students

- Informal warnings – 67%
- Formal disciplinary meetings – 27%
- Temporary suspensions – 2%
- Other – 13%
  - Formal warnings, remedial projects, discussion with student council, meeting with dean
- Dismissal – 7%
  - Incidents involving patient confidentiality
  - Incidents involving conflicts of interest
  - Multiple incidents of profanity, frankly discriminatory language, depiction of intoxication, and sexually suggestive material

Chretien et al. JAMA 2009;302(12):1309

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## State Medical Boards

- 92% reported online professionalism issues
  - Inappropriate contact with patients
  - Inappropriate prescribing
  - Misrepresentation of credentials or clinical outcomes
- Disciplinary actions
  - Informal warnings
  - License limitations
  - License suspension
  - License revocation




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## THE HIPPOCRATIC OATH

I swear to fulfill, to the best of my ability and judgment, this covenant:

I will respect the hard-won scientific gains of those physicians in whose steps I walk, and gladly share such knowledge as is mine with those who are to follow.

I will apply, for the benefit of the sick, all measures [that] are required, avoiding those twin traps of overtreatment and therapeutic nihilism.

I will remember that there is art to medicine as well as science, and that warmth, empathy, and understanding may outweigh the surgeon's knife or the chemist's drug.

I will not be ashamed to say "I know not," nor will I fail to call in my colleagues when the skills of another are needed for a patient's recovery.

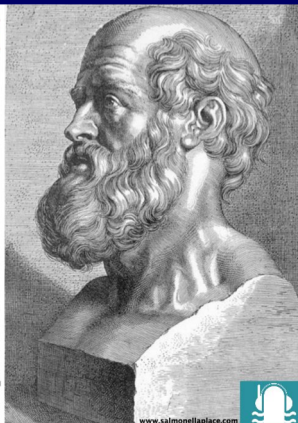
I will respect the privacy of my patients, for their problems are not disclosed to me that the world may know. Most especially must I tread with care in matters of life and death. If it is given me to save a life, all thanks. But it may also be within my power to take a life; this awesome responsibility must be faced with great humbleness and awareness of my own frailty. Above all, I must not play at God.

I will remember that I do not treat a fever chart, a cancerous growth, but a sick human being, whose illness may affect the person's family and economic stability. My responsibility includes these related problems, if I am to care adequately for the sick.

I will prevent disease whenever I can, for prevention is preferable to cure.

I will remember that I remain a member of society, with special obligations to all my fellow human beings, those sound of mind and body as well as the infirm.

If I do not violate this oath, may I enjoy life and art, respected while I live and remembered with affection thereafter. May I always act so as to preserve the finest traditions of my calling and may I long experience the joy of healing those who seek my help.



www.salmonellaplace.com

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## HIPAA

- Stands for **H**ealth **I**nsurance **P**ortability and **A**ccountability **A**ct
- Passed by Congress in 1996
- Rules and regulations supporting HIPAA are issued by the federal Department of Health and Human Services (HHS)
- Possible Civil and/or Criminal Penalties for violations

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## The Privacy Rule

- Name for HIPAA regulations issued by HHS
- Requires that any health care provider that transmits health information in electronic form take steps to protect all "individually identifiable health information"
- Protected Health Information (PHI) includes any info allowing identification of an individual
  - Address, Birthday, Social Security Number, etc.

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## HITECH

- **H**ealth **I**nformation **T**echnology for **E**conomic and **C**linical **H**ealth **A**ct
- Enacted February 17, 2009
- **REQUIRES** HHS to audit covered entities and assess penalties
- Increased penalties and created a tiered penalty structure based on 'culpability'

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## A 'New and Improved' HIPAA?

- February 2011
- Cignet Health – Maryland
- 41 patients had been denied access to their medical record
- Uncooperative with the investigation
- \$4.3 million fine

"Today the message is loud and clear: HHS is serious about enforcing individual rights guaranteed by the HIPAA privacy Rule and ensuring provider cooperation with our enforcement efforts."  
-OCR Director  
Georgina Verdugo

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## ER Nurse

- Cheryl James, RN
- Nurse at Oakwood Hospital
- Fired after posting on her Facebook account indicating her displeasure with having treated a "cop killer" that day




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## ER Nurse

- Posting did not include the patients name
  - The patient was identifiable because of ongoing media coverage
  - The alleged cop killer was well known
- When her boss called, she immediately removed the posting and thought she might get written up or suspended.

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## ER Physician

- Dr. Alexandra Thran
- 48 year old ER Physician in Rhode Island
- Forced to resign her clinical privileges after "she had used her Facebook account inappropriately to communicate a few of her clinical experiences in the [ER]."
- Did not use patient names
- Had no intention to reveal confidential patient information

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## ER Physician

- The nature of one person's injury was such that the patient was identified by an unauthorized third party
- As soon as it was brought to Dr. Thran's attention she deleted her Facebook account
- In addition to losing her job, the Rhode Island State medical board found her guilty of "unprofessional conduct."
  - Required to pay \$500
  - Required to take a CME course on confidentiality

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## Five nurses fired for Facebook postings

### Nurses Fired Over Cell Phone Photos Of Patient

*Case Referred To FBI For Possible HIPAA Violations*

### Photos of dying patient posted to Facebook get four hospital workers fired

**What Were You Thinking?? Nurse Assistant Fired For Posting Pic Of 51-Year-Old Patient's Buttocks On Facebook**

### State Gives Kitsap Health & Rehab a Deadline After Nude Photos Incident

- Temporary Ban on New Admissions
- Might be cut from Medicare/Medicaid Program

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## Privacy

- The physical space, clothing, and other measures taken to ensure that the private conversations remain so, and that patient's dignity is preserved and embarrassment minimized by providing appropriate clothing
- The patient's rights and expectations that personal health information is shared only between professionals who need it to manage the patient



Segen's Medical Dictionary

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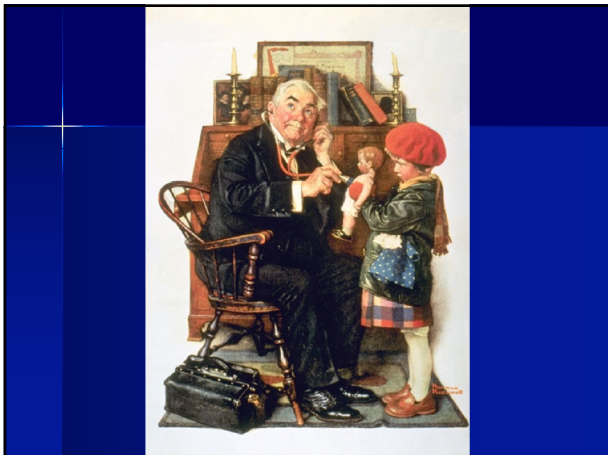
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## Federation of State Medical Boards (FSMB)

The benefits of social media “must occur within the proper framework of professional ethics, and physicians...[should maintain]... the same professional and ethical standards in their online activity” as they do offline.



Model Policy Guidelines for the Appropriate Use of Social Media and Social Networking in Medical Practice  
fsmb.org

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"I am your doctor. You are my patient.  
There are boundaries we just cannot cross."  
~Anderson Spickard, Jr, M.D.

Vanderbilt University Center for Professional Health – [vanderbilt.edu/cph](http://vanderbilt.edu/cph)

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## Interacting With Patients



- Physicians are discouraged from interacting with current or past patients on personal social networking sites such as Facebook.
- Physicians should only have online interaction with patients when discussing the patient's medical treatment within the physician-patient relationship
- These interactions should never occur on personal social networking or social media websites.



FSMB Guidelines for the Appropriate Use of Social Media and Social Networking ([fsmb.org](http://fsmb.org))

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## Posting Content



- Any information posted on a social networking site may be disseminated (whether intended or not) to a larger audience
- Whatever is posted may be taken out of context or remain publicly available online in perpetuity.
- When posting content online, always remember you are representing the medical community. Act professionally and take caution not to post information that is ambiguous or that could be misconstrued or taken out of context.



FSMB Guidelines for the Appropriate Use of Social Media and Social Networking ([fsmb.org](http://fsmb.org))

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**Some want Mercy Hospital doctor fired because of Facebook post**

**Amy Dunbar**  
January 20 at 6:15pm via mobile · 48

So I have a patient who has chosen to either no-show or be late (sometimes hours) for all of her prenatal visits, ultrasounds, and NSTs. She is now 3 hours late for her induction. May I show up late to her delivery?

**Amy Dunbar, MD**  
Mercy Clinic OB/GYN

**Media**  
**Amy Dunbar: Tardiness-Hating OB/GYN Now Most Reviled St. Louisan on Facebook**

**Mercy**

"Our physician leadership has already called Dr. Dunbar. Her comments were definitely inappropriate. We are also reviewing them to determine if they violated privacy issues, etc. That process requires a more thorough review, but we will determine the appropriate response as quickly as possible. In the meantime, know that our physician organization holds its members to the highest standards and strives to improve our service and clinical care through that process."

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**Online is There Forever!**

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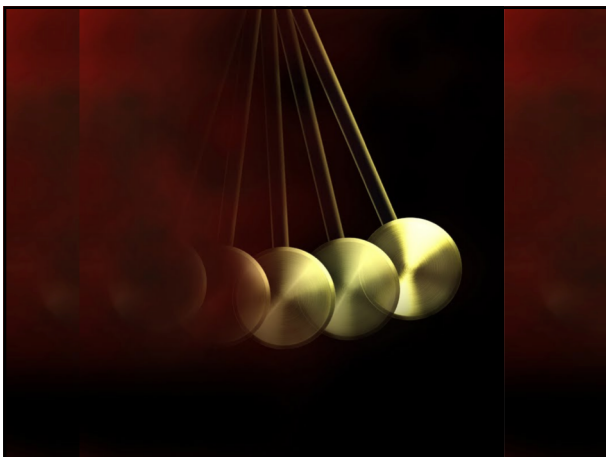
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- Nursing student Doyle Byrnes
- Asked for permission to photograph the placenta
- Posted on Facebook, as did 3 other students
- Dismissed the next day from the nursing school for unprofessional behavior
- Went to court where a Federal judge sided with the students




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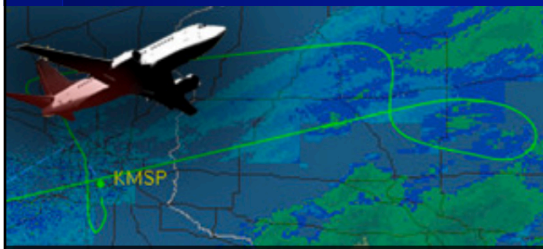
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### Pilots Who Missed Airport By 150 Miles: We Weren't Sleeping

Pilots of wayward jet lose licenses




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### Electronic Distraction

- A neurosurgeon making personal calls during an operation
- A nurse checking airfares during surgery
- A poll showing half of technicians running bypass machines admitted texting during a procedure



"My gut feeling is lives are in danger. We're not educating people about the problem, and it's getting worse."  
-Dr. Peter Papadakos

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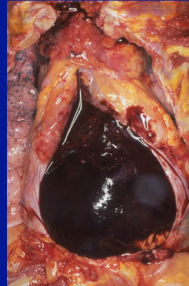
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## Electronic Distraction

- Resident began using her smartphone to begin entering an attending physician's order to cease a patient's anticoagulation therapy
- In the middle of the task she received and responded to a personal text message about an upcoming party
- She never finished entering the order and the patient continued receiving warfarin
- Three days later the patient developed a hemopericardium with tamponade and required emergency open heart surgery to remove the blood




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## NEW YORK POST

"A Mount Sinai Hospital technician — responsible for running complicated equipment during open-heart surgeries — watched porn on his smartphone as patients lay with their lives in the balance just inches away..."

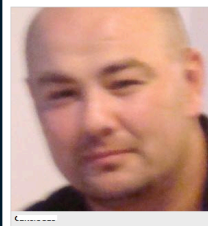
### XXX-ray vision in Mt. Sinai O.R.: suit

By DON KAPLAN  
Last Updated: 11:36 AM, August 14, 2012  
Posted: 12:39 AM, August 14, 2012

Like 168 people like this. Sign Up to see what your friends like.

Like 7 Tweet 53 More Print

A Mount Sinai Hospital technician — responsible for running complicated equipment during open-heart surgeries — watched porn on his smartphone as patients lay with their lives in the balance just inches away, according to a bombshell lawsuit by former cardiovascular tech Sandra Morris.



Both she and [redacted] — toiled as cardiovascular perfusionists — techs responsible for setting up and running the sophisticated heart-and-lung machine that keeps patients alive while surgeons repair their organs.

She said [redacted]'s porn habit was so "commonplace [in the operating room] that other perfusionists routinely joked about his behavior," according to the lawsuit she filed last week.

Morris is suing her former supervisor, the hospital and another boss, Ricardo Lacerda, for allegedly creating a hostile work environment.

She and her lawyer provided The Post a copy of a departmental memo banning the use of cellphones in the operating room last year, on which someone in his office crossed out the word "cellphone" and replaced it with "porn."

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Physicians must recognize that actions online and content posted may negatively affect their reputations among patients and colleagues, may have consequences for their medical careers (particularly for physicians-in-training and medical students), and can undermine public trust in the medical profession. – AMA Ethics 9.124(f)

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### AMA Opinion 9.124

- Adhere to the same principles of professionalism online as offline
- Maintain privacy and confidentiality
- Use privacy settings to safeguard one's own personal information/content to the extent possible. Actively police your online content
- Maintain appropriate professional boundaries
  - Separate personal and professional content
- Be responsible and bring unprofessional content to and individuals attention

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### Case 1 - Tweets

A Pediatrician is frustrated by a mom who demands that the hospital provide free diapers and formula. She tweets that she hates "lazy, freeloading parents who should get a job or stop having kids." Another parent reads this and is upset.



Adapted from FSMB Model Policy Guidelines on Social Media

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### Case 2— Facebook 'Friend'

Shortly after a 5 year old trauma patient who had been in the hospital for months is discharged, the mom asks to "friend" one of the PICU attendings on Facebook. The attending felt conflicted about the request but thought it was OK because the child was no longer his patient. The mom has never posted anything inappropriate, and only contacts the attending to wish him a happy birthday.

Adapted from FSMB Model Policy Guidelines on Social Media

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### Case 3 – The blurred line

A concerned parent notes that one of the resident physicians frequently describes “partying” on his Facebook page, which is accompanied by images of himself intoxicated. The parent begins to question whether the resident is mature enough to care for her child.

Adapted from FSMB Model Policy Guidelines on Social Media

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### Case 4 – videotaping a patient

A first-year resident films another doctor inserting a chest tube into a patient. The patient’s face is clearly visible. The resident posts the film on YouTube for other first-year residents to see how to properly do the procedure.

FSMB Model Policy Guidelines on Social Media

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### Case 5 – videotaping by the family

A malpractice lawsuit is filed against a Pediatrician alleging improper resuscitation. The father had secretly recorded the resuscitation and the plaintiff’s attorney wants to introduce the video as evidence.

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## Videotaping in the Delivery Room

### Advantages

- Provides a lasting memento for the family
- Provides a detailed record to defend against malpractice claims

### Disadvantages

- Recorded evidence may increase the possibility of a patient filing a lawsuit
- Visual evidence may unduly impact the jury
- Editing of the videotape may misrepresent the events in the delivery room

J Fam Pr 1998;46(3):251

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## Admissibility of Videos




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## Smith v. Cleveland Clinic

- Family of a patient who died secretly record a conversation with a physician discussing the cause of death
- Defense argues that the recording is illegal and should not be used
- Court finds in favor of the family



968 N.E.2d 41 (8th Dist. 2011)

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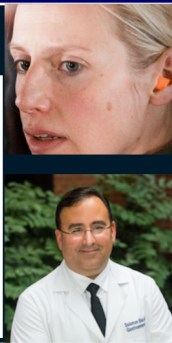
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Daily Mail

**Patient is awarded \$500,000 after he secretly recorded his doctor saying she wanted to hit him and joking that he had STD - while he was under anesthesia**

- The unnamed man from Vienna, Virginia, recorded his colonoscopy on his phone to help him understand his doctor's instructions afterwards
- But when he listened back to it he heard the anesthesiologist saying she wanted to 'punch him in the face' and falsely accuse him of having syphilis
- Tiffany Ingham also said she was going to mark the patient down as having hemorrhoids even though he didn't
- The gastroenterologist, Solomon Shah, was not fined as he did not say anything - but he did not object to Ingham's comments either




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Virginia Board of Medicine



**2006 Code of Virginia § 54.1-2915 - Unprofessional conduct; grounds for refusal or disciplinary action**

- Board became aware through media attention
- Conduct was "inappropriate", "unprofessional"
- Violated 54.1-2915.A(16)
- Disciplinary action taken against both

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## Changes You May Wish to Make in Practice

- Social Media is Everywhere – Privacy is an illusion
- What you write is there forever
- Discussing patients, even unidentified by name, may breach confidentiality and disrespect patient privacy
- Quick and easy access to social media blurs the line between one's personal and professional lives – pause before posting
- Maintain professional boundaries in the use of electronic media – Do not “friend” patients / parents
- Know and follow state licensing board regulations and employer policies
- Be mindful that you may be secretly recorded

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## References

- FSMB Model Policy Guidelines on Social Media
- Online posting of unprofessional content by medical students
  - Chretien et al. JAMA 2009;302(12):1309
- AMA Opinion 9.124 - Professionalism in the Use of Social Media

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