Risk Alert
Risk Management Advisory Notes

Electronic Media:

Sound Policies Maximize Benefits, Minimize Improper Use
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Background

Electronic media – including e-mail, blogs, social networking sites, instant messaging and texting have become a primary means of self-expression. The ever-growing volume of text communication has created a new sense of connectedness – as well as a new cluster of risks, including electronic discovery requests that may encompass text messages, blog entries and social media postings.

Administrators and risk managers in all healthcare settings must understand the exposures associated with such electronic media and create policies that recognize their benefits while minimizing the potential for misuse.

The following cases demonstrate the potential impact of careless electronic communication on malpractice litigation:

- An operating room nurse was texting personal messages during a long surgery. The patient sustained complications during the procedure and sued the hospital for damages. During discovery, the plaintiff's attorney secured records of the nurse's text messages and used them as evidence of inattentiveness and substandard practice.

- A paediatrician was sued by the parents of a child who died from complications of diabetes. Under a pseudonym, he blogged about his courtroom experiences, discussing such sensitive topics as jury preparation tactics and defence strategy. Late in the trial, the plaintiff's attorney accessed the blog and identified the defendant as its writer. The next day, the physician settled the case for a substantial amount.

A SUGGESTED RISK MANAGEMENT APPROACH

Human resources policy should directly address the issues raised by the proliferation of electronic media, in order to clarify organizational expectations and reduce liability exposure. The strategies that follow are designed to help administrators effectively manage the widespread use of these communication tools:

- **Create and enforce a formal policy governing personal use of networked computers** Create provisions that strictly ban all messages and activities of an offensive, threatening, harassing, defamatory or unprofessional nature. Request that employees sign a form of non-compliance. Signed forms should be retained in human resources' files.
  To maintain morale, consider installing non-networked computers for personal use during lunch and breaks.

- **Notify staff in writing of monitoring policies** Explain that employers have the right to monitor e-mails and other communication on facility owned computers and that

- On his personal blog, an emergency room (ER) physician complained that uninsured patients used ERs as primary care providers, creating logjams and preventing doctors from properly attending to urgent cases. At a later date, the blogging physician was sued by an uninsured patient, alleging a missed diagnosis. The plaintiff's attorney produced copies of the blog postings, making the case more difficult to defend.

ISSUES OF CONCERN

Uncontrolled use of social media and electronic devices by staff members may result in the following exposure, amongst others:

Organizational liability and impact on litigation. Harassing, threatening or otherwise inappropriate messages posted by employees from workplace computers or texted from employer issued mobile telephones can create vicarious liability exposure for the organization. And as seen above, improper litigation related postings and text messages can undermine legal defence efforts.

Patient/Resident privacy. Use of social/electronic media in the workplace may violate privacy and security requirements under the Guidelines for the Use of Social Media Among Health Care Providers set by the Ministry of Health. The use of social media to share audio, visual and multimedia recordings relating to patient identifiable information constitutes a breach of the said guidelines.

Workplace productivity and patient/resident safety. Texting and conversing on cellular telephones in care areas may decrease staff efficiency and lead to distraction and error, hence endangering patients/ residents. Even the use of MP3 players and other headphone devices can create a sense of disconnection from the environment, impairing communication and slowing response time.

Network security. Unregulated web browsing and e-mailing on networked computers can introduce viruses or spyware into the system, resulting in possible data loss, theft or damage. In addition, sharing of passwords and other security lapses can compromise confidential information, with potentially serious regulatory and liability implications.

Risk to reputation. Utilizing social media forums to recruit new patients/ residents or build loyalty may end up harming an organization's reputation, unless the effort is managed in accordance with best practice guidelines. Exposures include, but are not limited to, jurisdictional issues and allegations of fraud and defamation.

Social Media Guideline For The Malaysian Healthcare Professionals

Due to the ubiquitous nature of the usage of social media, Section Concerning House Officers, Medical Officers and Specialist of Malaysian Medical Association (SCHOMOS-MMA) had published a social media guideline under their 2016 guidebook. The guidebook outlines the expected standard of practice on the usage of social media which includes:

have disciplinary consequences, up to and including termination.

- **Regulate cellular telephone use by staff members**
Address key issues such as personal calls while on duty, confidentiality, conversational volume and etiquette, talking while driving and utilization of the camera feature. Issue separate and stricter policies for work issued mobile telephones, given the organization's vulnerability to vicarious liability.

- **Revisit the organization's privacy and confidentiality policies**
Consider the risks of posts and text messages containing patient identifiable information or other sensitive material.

- **Convey to staff the possible implications of careless use of social media**
Including the permanence and recoverability of deleted messages, limits of anonymity and realities of e-discovery. Clearly describe both the nature of the risks and the consequences of policy violations in the employee handbook, and use staff training sessions to reinforce the importance of sound judgement

- **Draft specific guidelines addressing the need for discretion during litigation and discovery**
Remind physicians and staff members that, as a threshold requirement, they must receive written authorization from patients/ residents prior to discussing their cases on blogs or Web sites. Postings should not include individually identifiable information.

SAFEGUARDING PATIENTS' INTEREST ON SOCIAL MEDIA

- Doctors must maintain patient privacy and confidentiality at all times on social media.

- Doctors must not discuss about patient's case or provide consultation on the following social media sites: Facebook, Twitter, Instagram, Blogs and YouTube.

- Doctors must not share details of personal information, medical information or images of body parts that may directly or indirectly reveal the identity of patient on social media.

- Doctors must obtain prior written consent from patients before capturing, sharing on social media or using photographs of patient for academic purposes.

- Doctors must ensure that patient care details intended for a professional closed target audience are not accidentally shared with other unintended recipients on social media.

SAFEGUARDING DOCTORS' INTEREST ON SOCIAL MEDIA

- Doctors must maintain a high level of professionalism at all times on social media.

- Doctors must not be seen portraying behaviours that are legally and/or professionally unacceptable to the profession (eg: alcohol intoxication, discriminatory gesture, etc.)

- Doctors should be mindful that any content shared on social media may be retrieved in the future for purposes that could either benefit or more likely harm their career.

- Doctors must avoid verbal conflicts with members of the public on social media.

- Doctors must not harm the reputation of their colleagues through contents posted on social media.

- Doctors must not make or reproduce any defamatory allegations against individuals or organisations on social media.

- Doctors must not make or reproduce offensive statements against any other race or religion on social media.

- Doctors should acknowledge personal opinions regarding healthcare-associated issues as such if shared with the public on social media

- Medical consultations between doctors and patients and doctors in Ministry of Health and doctors in private institutions must not be held on social media.

- Details of any professional consultation held on social media must be followed with contemporaneous documentations in patient's case notes.

- Doctors must not refer cases over social media platforms.

- **Ensure that both legal counsel and information technology staff review all social media-related policies inappropriate conduct may for regulatory compliance and technical relevance**

- **Ensure appropriate etiquette and a mature attitude**
Remind staff members that they are viewed as ambassadors of the organization, and their posture on the internet should reflect this fact. Consider assigning mentors to coach less experienced staff in understanding the nuances of professional conduct.

- **Regularly underscore cyber security rules and concerns using orientation and training sessions, posters, supervisory reminders and other means**

- **Foster constructive use of social media**
Many organisations creatively utilize this technology for purposes of outreach, reputation management and emergency communication. Written policy should address the following important considerations:

  - Guidelines for engaging e-patients

  - Protocols for managing online conversations

  - Parameters for giving patients both personal medical advice and general medical information

  - Procedures for combining social media with personal health records

  - Criteria for disengaging e-patients (eg: publishing derogatory statements or falsehoods about the organization)

SAFEGUARDING THE HEALTHCARE INSTITUTION ON SOCIAL MEDIA

- Doctors must keep the identity of the healthcare institution involved in patient care confidential when reproducing healthcare-associated contents on social media.

- Doctors must not make or reproduce defamatory allegations against any healthcare organisation on social media.

Conclusion

Electronic media define connection in today's world. Healthcare administrators should establish a balance between staff members' reliance on these ubiquitous communication tools and the perils posed by their misuse. The measures described in this resource serves as a practical advisory to guide the use of electronic media and help healthcare organizations minimize risk by providing the guidance needed. Nevertheless, healthcare professionals should always consult their superiors on the uncertainties related to conduct on social media.

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