



MEDICAL PRACTICE  
IN THE AGE OF  
ELECTRONIC COMMUNICATION

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# INTRODUCTION

Trends: Regulation increase

Litigation exposure increase

Reliance on electronic communication



# ELECTRONIC COMMUNICATION

Advances in technology have revolutionized medical care:

- Communication

- Documentation

- Education and training

- Information sharing

- Collegiality



# So why is it “the root of all evil”

Information technology presents risks to patients and providers:

Privacy

Exposure to liability

False, incomplete information

Safety risk to coworkers and patients

compromise patient/provider relationship



# ELECTRONIC COMMUNICATION: EVERYWHERE AND HERE TO STAY

## EMAIL

1980 infancy

Today-everyone, everywhere

Cheap and convenient

Easily transferred, shared, corrupted, stolen

### Downside?

“Cheap, Easy and Out of Control”

Trashcans are not trashcans

# SMARTPHONE

- 95% of American Adults own a cellphone
- 64% own a smart phone.
- 97% use phones for texting
- 46% of users say they could not live without their smartphone
- 62% of smartphone owners have used their phone in the past year to look up information about a health condition.
- 57% have used their phone to do online banking.
- 44% have used their phone to look up real estate listings or other information about a place to live.
- 43% to look up information about a job.
- 40% to look up government services or information.
- 30% to take a class or get educational content.
- 18% to submit a job application

# SOCIAL MEDIA

## FACEBOOK

1.94 billion users

Daily active users: 1.15 billion

All ages, all demographics, professions,  
worldwide

7.5 billion people on earth





# MEDICAL PROFESSION

Heavily regulated profession:

Boards

Joint Commission

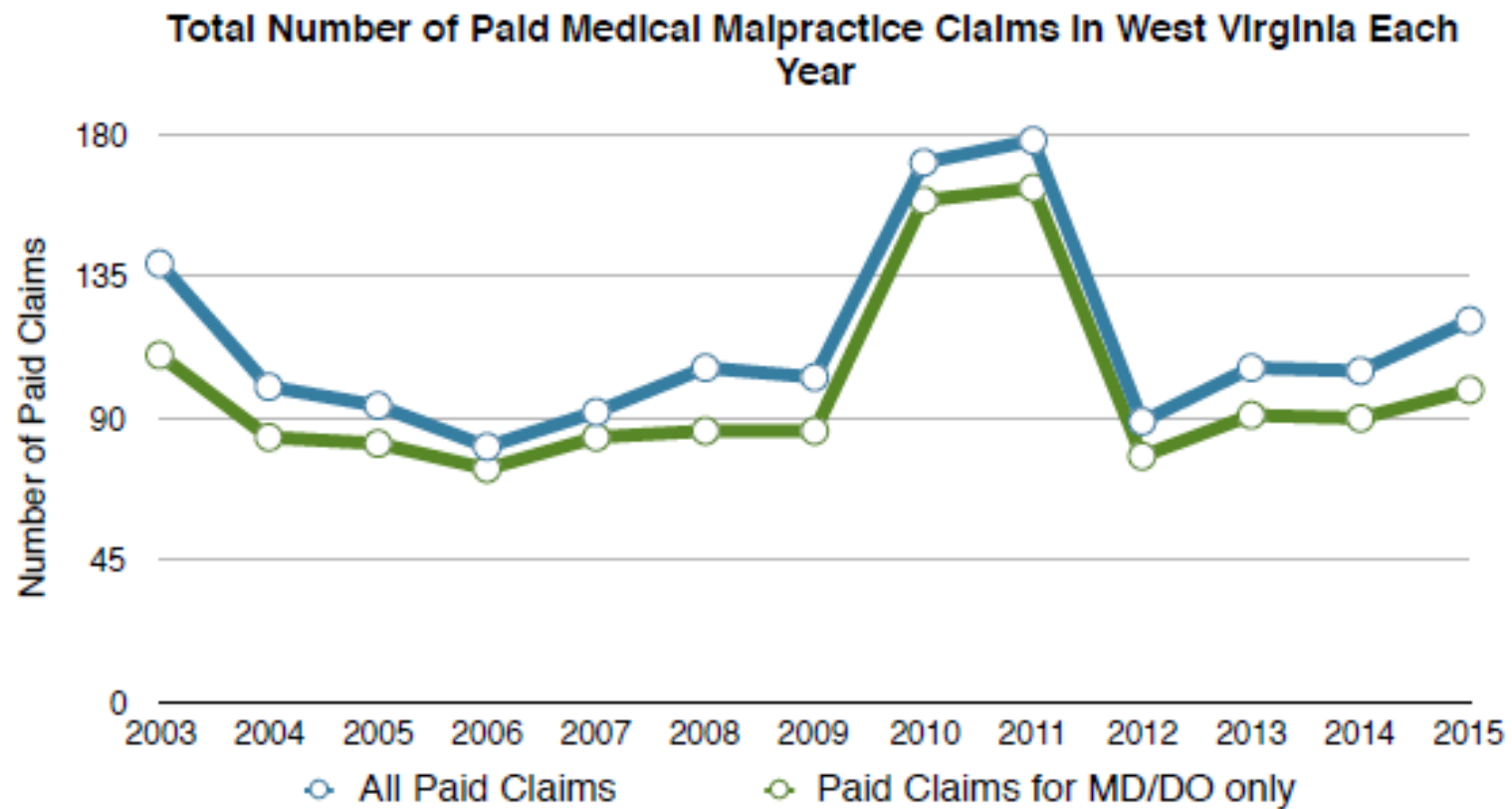
Employer policies and procedure

State and federal statutes and administrative regulations

State civil common law

State and federal Criminal code





**Figure 1:** Total number of Paid Medical Malpractice Claims for West Virginia from 2003-2015 for All Health Care Practitioners Combined as Well as for MD/DOs Only.



# LITIGATION

Litigation health care professionals  
might be exposed to:

Medical malpractice

Automobile Accidents

Workplace injury

Slip and Fall

Employment claims

Disability

Medicaid/Medicare Billing

Abuse and Neglect/Criminal

Custody

Personal Injury- Invasion of Privacy



# LITIGATION

## Health Care Professional Involvement:

Party

Witness - facts

Witness - expert

# BE PREPARED: BEST PRACTICE (AND BEST DEFENSE)

The Discovery Rule

West Virginia Rule of Civil Procedure Rule 26:

Parties may obtain discovery regarding *any matter*, not privileged, which is *relevant* to the subject matter involved in the pending action....It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears *reasonably calculated to lead to the discovery of admissible evidence*.



# BE PREPARED: BEST PRACTICE (AND BEST DEFENSE)

## DISCOVERY TOOLS:

- REQUEST FOR PRODUCTION OF DOCUMENTS
- INTERROGATORIES
- REQUESTS FOR ADMISSIONS
- DEPOSITIONS
- SUBPOENA DUCES TECUM
- LIVE TESTIMONY



# BE PREPARED: BEST PRACTICE (AND BEST DEFENSE)

## REQUEST FOR PRODUCTION OF DOCUMENTS

### REQUEST No. 1

Produce any and all texts, Facebook posts and/or emails (including those to personal and/or work email accounts referred to in her deposition) sent or received by any member of the Justice League which relate to or mention in any way any of the following (a) Batman (b) Wonder Woman (c) The Flash (d) or any other member of the Justice League, during any time in which Superman was a member.



# BE PREPARED: BEST PRACTICE (AND BEST DEFENSE)

Request for Production of Documents

Request No. 1.

Produce any and all notes, diaries, journals, tape recordings, e-mails, text messages or other documents and records of any kind, in whatever form they exist, including electronic formats, as well as all day-timers, calendars or other records of daily activities, whether kept at the office or at home, whether personal or work-related, and any other document or memoranda sent, prepared or received by you that relates in any way to the allegations set forth in your Complaint and/or your employment at Justice League for the time period beginning on your date of hire at the Justice League through the present.



# BE PREPARED: BEST PRACTICE (AND BEST DEFENSE)

- Be factual
- Be professional
- Consider: What would your mother think?





# BE PREPARED: BEST PRACTICE (AND BEST DEFENSE)

Stick to the facts: document what you see, hear

If in doubt, consult:

Supervisor

Human Resources

Administration



# BE PREPARED: DON'T FORGET THE PRIVACY RULE

## HIPAA Concepts

### Protected Health Information (PHI)

PHI is information that :

is created or received by the health care provider

relates to the patient's health, the provision of health care services or the payment identifies or can be used to identify the patient; and

is maintained or transmitted either electronically or by any other form or medium.

# HIPAA

- PHI includes both written and oral information as well as demographic information from the patient.
- The Office of Civil Rights of the Department of Human Services is tasked with enforcement.
- [www.hhs.gov/ocr/hipaa](http://www.hhs.gov/ocr/hipaa)

# HIPAA VIOLATIONS VERSUS GOOD PRACTICE

WHAT'S THE DIFFERENCE?



**Gossip Regarding  
Patient Information!**

**Improper Disposal of  
Patient Information!**

**Employee Dishonesty  
can be as simple as  
checking a file when  
you aren't involved.**

<https://thenetymuse.com/2015/05/08/10-common-hipaa-violations-you-must-avoid.html>

**Social media can  
create many issues.  
For example if a  
patient thanks you  
and you say you're  
welcome, you might  
be violating HIPAA.**



**Don't ever share  
patient health  
information with  
people who shouldn't  
have access.**

**Close out computer  
programs with  
patient information  
when not in use.  
Similarly don't share  
passwords!**

**Minimize occurrences  
where patient  
information can be  
overheard or  
accessed!**

<http://www.carecloud.com/continuum/14-best-practices-hipaa-compliant-staff/>

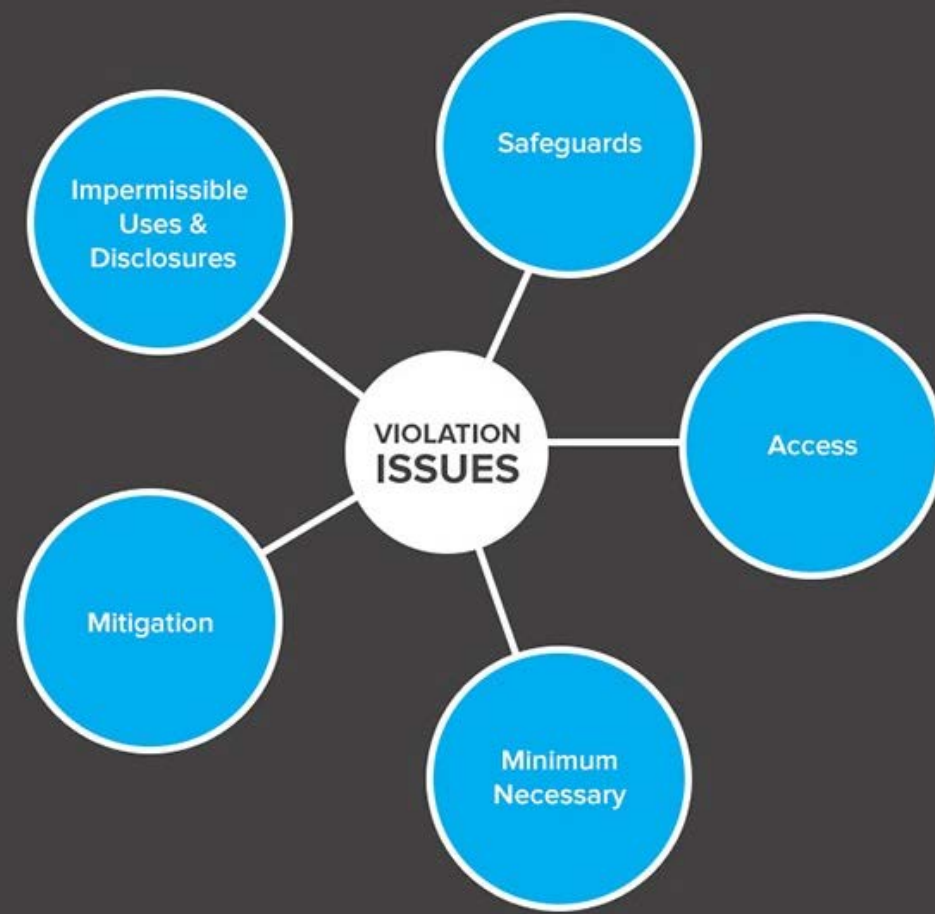
**Don't connect with  
patients on social  
media if you can avoid  
it! If**

<http://www.physicianspractice.com/mobile/social-media-dos-and-donts-medical-practices/page/0/2/>

# 10 Examples of HIPAA Violations

- 1 Absence of a "Right to Revoke" Clause
- 2 Release of the Wrong Patient's Information
- 3 Release of Unauthorized Health Information
- 4 Release of Information to an Undesignated Party
- 5 Failure to Adhere to the Authorization Expiration Date
- 6 Lack of Patient Signature on HIPAA Forms
- 7 Improper Disposal of Patient Records
- 8 Unprotected Storage of Private Health Information
- 9 Failure to Promptly Release Information to Patients
- 10 Small-scale Snooping

## Top 5 HIPAA Violation Issues (2008 - 2013)



# Civil Penalties

The "American Recovery and Reinvestment Act of 2009"(ARRA) that was signed into law on February 17, 2009, established a tiered civil penalty structure for HIPAA violations (see below). The Secretary of the Department of Health and Human Services (HHS) still has discretion in determining the amount of the penalty based on the nature and extent of the violation and the nature and extent of the harm resulting from the violation.

## Individual did not know that he/she violated HIPAA

### Minimum Penalty

\$100 per violation

\$25,000 annual for repeat violations

### Maximum Penalty

\$50,000 per violation

\$1.5 million annual for repeat violations

## Due to reasonable cause and not due to willful neglect

### Minimum Penalty

\$1000 per violation

\$100,000 annual for repeat violations

### Maximum Penalty

\$50,000 per violation

\$1.5 million annual for repeat violations

## Due to willful neglect but violation is corrected within the required time period

### Minimum Penalty

\$10,000 per violation

\$250,000 annual for repeat violations

### Maximum Penalty

\$50,000 per violation

\$1.5 million annual for repeat violations

## Due to willful neglect and is not corrected

### Minimum Penalty

\$50,000 per violation

\$100,000 annual for repeat violations

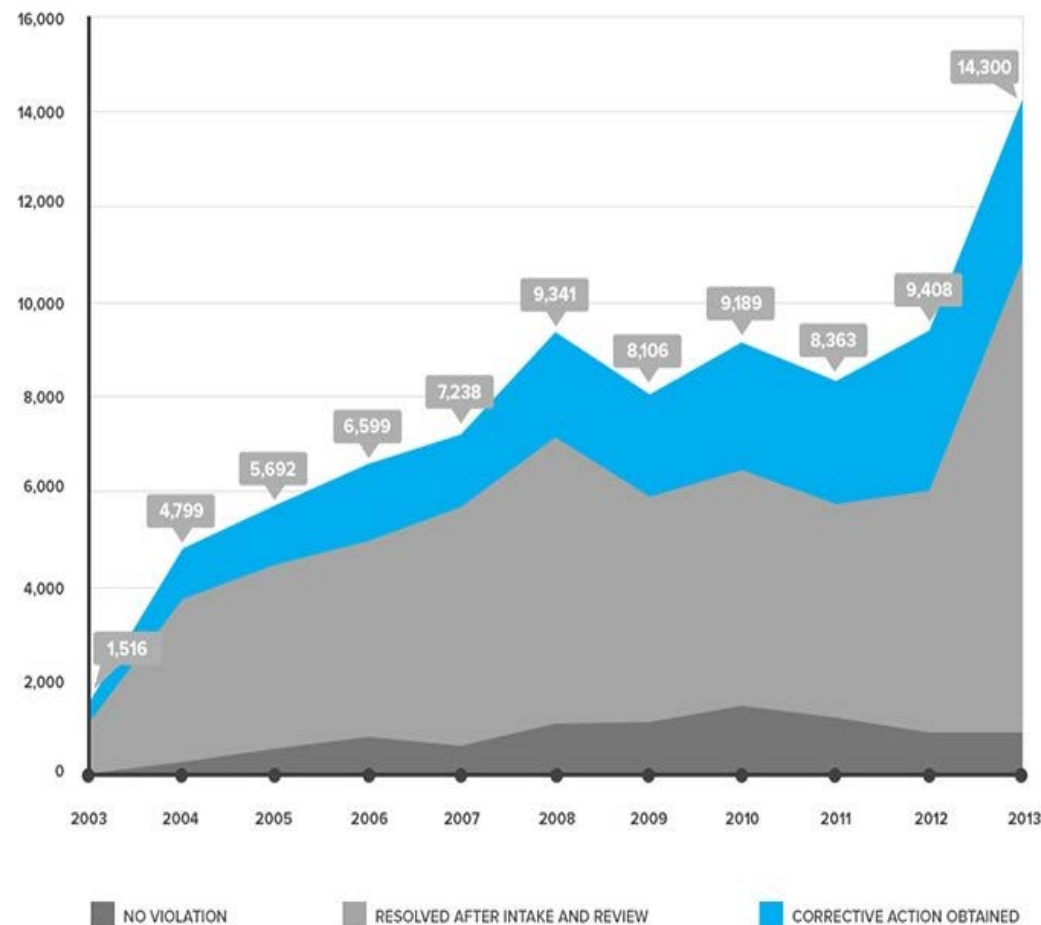
### Maximum Penalty

\$50,000 per violation

\$1.5 million annual for repeat violations

# Enforcement Results by Year

The number of HIPAA complaints received by the U.S. Department of Health & Human Services has risen nearly 10x since 2003.



# BE PREPARED: SOCIAL MEDIA

SOCIAL MEDIA IS SOCIAL

COMMON MYTHS:

If its deleted its gone.

If its private, its private.

If you don't use their name, its ok.

No harm, no foul.

Confidential is confidential



## SOCIAL MEDIA FAIL- anger/outrage

- Anger:

Man accused of murdering a young police officer was being treated for gunshot wound in Dearborn, Michigan Hospital.

A nurse who treated the accused posted on Facebook, that she had come face to face with the devil and hoped that the “cop killer would rot in hell.”

She did not discuss the details of his condition, his name or other identifying information. However, in light of the media coverage, the patient was easily identifiable. Nurse terminated for HIPAA breach.



# SOCIAL MEDIA FAIL- easy to identify

- Small town

Paramedic posted information on a social media site about a sexual assault victim. The victim's name was not disclosed, but the paramedic detailed enough information in the post that the media was able to discover the identity of the victim and where she lived. The plaintiff filed a lawsuit against the paramedic and the emergency service he worked for under common law invasion of privacy.

# SOCIAL MEDIA FAIL- Snooping

Nurse “snoops” in her husband’s ex-wife’s medical chart, provides info to her husband, then goes to jail.

2013, Tampa Florida, nurse snoops in medical records of nephew’s girlfriend, learns she delivered a baby and put the child up for adoption, announces at a family funeral - loses her license.

# SOCIAL MEDIA FAIL - Gossip

New Jersey parent alleges Hospital employee shared details of her 11 year old son's attempted suicide with people at his school. Child is bullied by his peers. Parent sues Hospital for breach of privacy, damages.

#Man vs. 6 Train: Nurse posts photo of an empty blood stained trauma room of a patient just hit by subway, no name. Lots of media coverage contemporaneous with post. Nurse loses her job.

# SOCIAL MEDIA FAIL- Compassion

Emily, 20 year old nursing student took a photo of 3 year old Billy, leukemia patient in the pediatric unit on her cellphone.

Emily asked Billy if she could take photo. He said sure.

Emily posted the photo on her Facebook page

“This is my 3 year old-leukemia patient who is bravely receiving chemotherapy! He is the reason I am so proud to be a Nurse.

In the photo, Room 324 of the unit was visible.

Emily was expelled from school and nursing program barred from unit.

(A Nurse's Guide to the Use of Social Media, [www.ncsbn.org](http://www.ncsbn.org))

# SOCIAL MEDIA FAIL - Expensive

- Walgreens Pharmacist snoops in prescription records of patient, provided information with the father of patient's child concerning use of birth control pills. (the baby's father was dating the pharmacist).
- Jury ordered Walgreens and pharmacist to pay Plaintiff \$1.44 million

# AMA Guidelines for Physicians in Social Media

- Finally, the American Medical Association (AMA) published guidelines for doctors using social media. The new policy encourages physicians to:
  1. Use privacy settings to safeguard personal information and content to the fullest extent possible on social networking sites.
  2. Routinely monitor their own Internet presence to ensure that the personal and professional information on their own sites and content posted about them by others, is accurate and appropriate.
  3. Maintain appropriate boundaries of the patient-physician relationship when interacting with patients online and ensure patient privacy and confidentiality is maintained.

# AMA Guidelines for Physicians in Social Media

- The new policy encourages physicians to (continued):
  4. Consider separating personal and professional content online.
  5. Recognize that actions online and content posted can negatively affect their reputations among patients and colleagues, and may even have consequences for their medical careers.



# CONCLUSION

Ask yourself:

Are you prepared?

Is your next move in your patient's interests?

Will your instant post lead to instant regret.

What would \_\_\_\_\_ say?