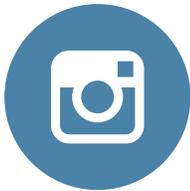




# Protecting Your (and Your Employer's) Professional Reputation ONLINE

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*\*This is the third article in a four-part series exploring social media and electronic communication challenges for health centers.*



In the 21st century, nearly every professional and business maintains some presence online – a dedicated website, Facebook page, LinkedIn profile, etc. Even if you are not an avid user of social media, it's more likely than not that your patients are. In fact, your patients may have even used social media to find you or to find out more about you. It is common to search online for potential providers and practices nearby.

As a result, cultivating a robust and positive social media presence can be a valuable tool for health centers and individual providers alike for activities such as:

- **Marketing to patients:** A well-designed and regularly updated public profile can encourage patients to join your practice. A poorly maintained website can have the opposite effect. When a potential patient searches “best primary care practice in Tulsa” or “top Santa Fe pediatricians,” you want to be at or near the top of the search results.
- **Recruiting employees:** Patients are not the only ones googling your business. People looking for jobs are likely to visit your website too. A strong social media presence can be a useful

recruitment tool to help draw providers and staff as well as medical students, residents, and other learners.

- **Connecting with the community:** Social media provides an easily accessible platform to engage with your local community and to disseminate important information quickly.

As with any powerful tool, social media can be harnessed for evil as well as for good. Just as quickly as you broadcast your accomplishments, others can spread misleading rumors, temporarily or permanently damaging your reputation.

## The Dark Side of the Internet

There are many online threats to an individual's and an organization's reputation. *Internal* threats originate from the organization itself; the reputational damage may be unintentional:

- A quick tempered staff member posts a disparaging comment about work on a personal Facebook page, which lists the health center as his/her employer;

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- An employee mistakenly tweets inappropriately from the corporate account instead of his/her personal account; or
- An employee inadvertently shares an internal communication describing a politically polarizing situation and the email is then widely circulated online.

When threats stem from *external* sources, such as competitors, community members, former employees, or even total strangers, they are more likely to be deliberately harmful:

- A disgruntled former employee intentionally leaks embarrassing information on the health center's Facebook page;
- A competitor trying to downplay the success of a particular clinician writes fake reviews to hurt the health center's business;
- So-called "trolls" attack individuals and organizations for fun with the explicit intention of ruining innocent (and not-so-innocent) reputations; or
- Hackers obtain network credentials and seize control of the health center's social media accounts, going on a rampage against its reputation.

Patient comments are in a category of their own. Whether or not the allegations are true, or are even written by actual patients, negative reviews can color public perception of a health center or a provider.

In a perfect world, honest reviews would help patients make informed choices about medical care and help health centers improve services. However, the Internet is far from

perfect — online reviews are rarely verified and feedback may not be reflective of the community served as a whole.

Like many businesses, health centers and their providers are struggling with the increasing consequences of online patient reviews and complaints, both formally on traditional review sites and informally on social media sites.



### Yes, They Can Say That About You (sometimes)

Freedom of speech protections extend online — both the speech of the reviewer and the host (e.g., the website) are protected. This safeguards a reviewer posting accurate, but perhaps unpopular, statements or unverifiable opinions as well as a private website removing posts (i.e., the website has the right to not be represented by a reviewer's speech).

The obvious tension between these competing rights has led to an increase in "non-disparagement clauses" in website Terms of Service, limiting a user's right to comment negatively (even if truthfully) and, in response, an uptick in state laws that aim to prevent such attempts at chilling speech.

This area is evolving. In late 2016, Congress passed the Consumer Review Fairness Act, which prohibits non-disparagement clauses,

but while the new law confers the "freedom to Yelp," it does nothing to ban "strategic lawsuits against public participation," which are typically used to target the authors of negative reviews.

Many times, reviews are not even based on whether a provider is objectively "good," but on tangential issues or interactions: a patient did not like the recommended course of treatment even though it was clinically appropriate or, a patient had a bad experience in the waiting room, which is unrelated to the provider's competency.

On its own website, a health center can moderate content, limiting the impact of negative comments and false information. But reviews posted to third-party sites are, for the most part, beyond reach and, in many cases, these reviews exist whether or not a provider or a practice actively sets up a profile.

Just because an online comment is negative does not make it false, but what if it is? Is there any recourse?

### Defamation, and Libel, and Slander — Oh My!

While there are broad protections for freedom of speech, there are limits, particularly where there is a substantial likelihood of significant harm that outweighs the restriction on individual liberty. Included in such limits are defamation laws that protect individuals, organizations, and even products, from false or unsupported statements resulting in harm to a reputation and/or financial interests.

You've likely heard the terms libel and slander thrown around, but



what do they actually mean?  
According to *Black's Law Dictionary*:

- **Defamation:** the act of harming the reputation of another by making a false statement to a third person; a false written or oral statement that damages another's reputation.
- **Libel:** a defamatory statement expressed in a fixed medium, especially writing, but also a picture, sign, or electronic broadcast.
- **Slander:** a defamatory statement expressed in a transitory form, especially speech.

Without diving too far into the legal minutiae, in order to prevail on a defamation claim, you must prove that a statement was false and caused harm. Depending on the situation, there may also be requirements to show either a malicious intent to harm another's reputation or unusual carelessness, such as insufficient research into a statement's truthfulness.

## You've Been Defamed. What Can You Do?

Often, the most difficult part is showing that a statement is factually incorrect. Statements of opinion ("I think Roger is a bad doctor") are typically not defamatory, but can nonetheless be harmful. Here are the broad approaches to addressing defamation claims:

- **Appeal to better senses.** If you are familiar with the individual and feel safe contacting them, reach out directly. For example, compose a brief, polite email asking about the statement(s) and try to engage in further dialogue. Explain how the statement is incorrect and, if available, include sources to back up this assertion. Or, if possible, offer to correct the issue.

The individual may be willing to delete the post if they feel the health center or provider is responsive or, where possible, the original complaint is resolved. While not always successful, talking it over can clear up miscommunications or misunderstandings.

Assuming this first option is off the table, move on to the forum itself – contact a moderator who oversees the website.

- **Terms of Service violations.** Nearly every website has a defined set of rules users must follow. These rules have titles like "Terms of Service," "Community Standards," and "Posting Guidelines." Look for pages explaining how to report inappropriate comments and "flag" posts for removal. If the comment or post violates the rules, the moderator should remove it from the website.
- **Escalation.** Some comments may not be technical violations, but it is always worth reporting to the website and essentially "asking for the manager." For example, perhaps one comment does not rise to the level of a violation, but one particular

user repeatedly commenting about you or your health center with misleading information suggests a problematic pattern of behavior to be monitored.

Websites vary widely in the rigor of their enforcement and, given the volume and pace of online content, moderators struggle to keep up. Plus, websites are not in the business of curating content. They offer platforms for users to share and create content precisely to encourage free speech and avoid censorship.



Not wanting to play the role of arbiter on a case-by-case basis, websites typically opt to stay out of the process altogether, deferring to the courts when necessary.

- **Court order.** With strong evidence, you may be able to obtain a court order declaring certain content defamatory. Generally speaking, websites respond promptly to such requests and, if not, search engines like Google can remove the links from search results so the content is more difficult to find.
- **Civil action.** You can try to bring a civil case in court; however, this is a novel approach and, even if the underlying facts have merit, many websites are reluctant to identify

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users, making it difficult to sue unless the offender is known.

None of these avenues are guaranteed and working to remove defamatory content can be a time-consuming and challenging process. Even when successful, sometimes it's too late to limit the damage to your reputation.

## Professional Consequences: Can They Fire Me for That Post?

It is not uncommon to see news stories about individuals fired after posting inappropriate comments online; however, whether or not an employer can impose professional consequences for an employee's reputation-damaging social media post is a moving target.

Many states make it illegal for employers to take adverse action against employees for engaging in lawful off-duty activities, like posting to social media. Similarly, federal labor laws like the National Labor Relations Act (NLRA) protect union and non-union workers' rights to speak out against an employer in order to improve wages or working conditions.

Increasingly, the National Labor Relations Board (NLRB) has found that social media posts may be protected under the NLRA. As a result, employer policies prohibiting or otherwise interfering with these activities could violate federal law.

In the absence of clear rules, the NLRB's General Counsel released several reports outlining decisions on social media policies. These reports are intended to serve as guidance, but this is a complex

and quickly changing area of law. Seek counsel from a local labor and employment lawyer when crafting policies that constrain employees' online behavior.

## Best Practices for Protecting Your Reputation Online

Here are some general tips:

- **Establish and update policies.** In consultation with a qualified attorney, outline rules for conduct on corporate social media accounts and make staff members aware of these policies, especially anyone with communications responsibilities.
- **Cultivate your online presence.** The best defense is a good offense: while it can be tempting to disengage, creating an online presence is exactly what you should be doing! Take advantage of platforms where you control the message, like the health center's website and social media accounts, to highlight accomplishments and unique contributions to the community.

Fostering a strong online presence with positive, accurate stories can help counteract negative comments to build (or rebuild) a good reputation.

- **Fill out online profiles.** There are dozens, possibly hundreds, of websites that rate providers and practice groups. More often than not, the profiles on these pages are blank, sparsely populated, or factually incorrect. Where

possible, edit these profiles and correct false information.

- **Leverage search engine capacity.** There are strategies to influence where you appear in search engine results, but sheer volume also helps. An abundance of positive press and activity can push the outlier negative comments down in the search results.
- **Read reviews.** Patients are reviewing your practice, so read the reviews. Where possible, respond with questions or direct patients back to the health center for further assistance. Use constructive criticism to improve your business and report false statements to the moderators.
- **Monitor accounts.** If patients are complaining online about services, logistics, or a specific provider, be responsive — ask questions and address fixable problems.
- **Retain strong privacy settings.** Enable dual authentication, change passwords regularly, and limit the number of people with access to your account(s).
- **Think before you post.** Always use discretion online. Once you post, the information is public, it's (often) linked to your name, and it's more or less permanent.

## What's Next?

The final article in this series will explore privacy and security issues with electronic communication: email, text, and patient portals. ♦

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