

Nurses and Social Media: Regulatory Concerns and Guidelines

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Social media possess tremendous potential for strengthening professional relationships and providing valuable information to health care consumers. However, the inappropriate use of social media by nurses is causing concern among educators, employers, and regulators, and nursing organizations are beginning to develop guidelines. When using social media, nurses must protect the patient's rights to privacy and confidentiality and consider the potential effects of their communications on their patients, their employers, their profession, and themselves. This article describes the professional, ethical, and legal implications of using social media inappropriately and provides guidelines from the National Council of State Boards of Nursing for using them appropriately.

Inappropriate use of social media by nurses causes concerns for employers, educators, and regulators. Employer concerns include the potential for damage to the reputation of the organization and liability for disclosure of protected health information (Genova, 2009; Klich-Heartt & Prion, 2010). Educators are concerned about boundary violations and privacy issues, which can affect relationships with clinical sites and the reputation of the nursing program (Lehavot, 2009; Trossman, 2010). The concerns of regulatory bodies center on the potential harm to patients and the public from the inappropriate use of social media (Anderson & Puckrin, 2011; Spector, 2010).

Nursing organizations are beginning to develop guidelines for using social and electronic media. The National Council of State Boards of Nursing (NCSBN) published a white paper, which included guidelines for using social media, for the nursing community, upon which this article is based (NCSBN, 2011). The American Nurses Association is revising its code of ethics to include social media (Prinz, 2011). Sigma Theta Tau recently published a book on the effective use of social media, devoting a chapter to guidelines for avoiding pitfalls (Fraser, 2011). Internationally, the Royal College of Nursing in the United Kingdom has published legal advice on using social media appropriately (Royal College of Nursing, 2009), and Canada has been exploring the issue from a regulatory perspective (Anderson & Puckrin, 2011).

In 2010, the NCSBN conducted a survey of boards of nursing (BONs; NCSBN, 2011) to gauge the prevalence of complaints regarding the use of social media. The majority of responding BONs (33 of 46 respondents) reported receiving complaints about nurses who violated patient privacy by posting photos or information on social networking sites. Of these 33 BONs, 26 reported taking disciplinary action based on the complaints. Actions included censuring the nurse, issuing a let-

ter of concern, placing conditions on the nurse's license, and suspending the nurse's license.

Case Study: Report to the BON

The following case depicts conduct that can result in a report to a BON. Sally, a nurse employed at a hospital, arrived at work one morning and found a strange e-mail on her laptop. Attached to the e-mail was a photo of a woman in a hospital gown, exposing her backside while bending over. Sally asked other staff members about the e-mail, and some said they had received it on their office computers, too. Nobody knew the source of the e-mail or the identity of the woman, but the background appeared to be a patient's room in the hospital. To find out whether others knew anything about the e-mail, Sally forwarded it to the computers and cell phones of several staff members who said they had not received it. Some staff members discussed the photo with an air of concern, but others laughed about it as they found it amusing. One staff member started a betting pool regarding the identity of the patient, and another staff member posted the photo on his blog.

Although staff members did not bring the e-mail to the attention of their supervisors, by midday the director of nursing and hospital management were aware of the photo and began an investigation because of their concerns about a possible violation of patient rights. The local media also became aware of the matter and covered the story so extensively that it eventually made national news. Law enforcement was called to investigate whether any crimes involving sexual exploitation had been committed. Hospital management placed several staff members on administrative leave and looked into violations of facility rules that emphasize patient rights, dignity, and protection. Management reported the matter to the BON, which opened investigations

to determine whether state or federal regulations enforceable by the BON had been violated. Eventually, the patient was identified, and the family threatened to sue the hospital and everyone involved.

Had the nurses taken a professional stand and reported the e-mail photo from the beginning, the problems could have been avoided. Instead, the situation escalated, involving the BON, the county prosecutor, and the national media. The patient felt humiliated and violated. The hospital was embarrassed by national media coverage and faced possible legal consequences.

Background

The use of social media and other electronic communication is increasing exponentially with the growing number of social media outlets, platforms, and applications, including blogs, social networking sites, video sites, and online chat rooms and forums (Klich-Heartt & Prion, 2010). Nurses often use electronic media personally and professionally. Social media can benefit health care in a variety of ways, including fostering professional connections, promoting timely communication with patients and family members, and educating and informing consumers and health care professionals (Fraser, 2011; Prinz, 2011; Skiba, Connors, & Jeffries, 2008). However, instances of inappropriate use of electronic media by nurses have been reported to BONs. Some cases have been reported in nursing literature and by the media (Prinz, 2011; Spector, 2010; Trossman, 2010)

Nurses are increasingly using blogs, forums, and social networking sites to share workplace experiences, particularly events that have been challenging or emotionally charged. These outlets provide a venue for nurses to express their feelings and reflect or seek support from friends, colleagues, peers, or virtually anyone on the Internet. Journaling and reflective practice have been identified as effective tools in nursing practice, and the Internet provides media for these helpful activities. Without a sense of caution, however, these understandable needs and potential benefits may result in a nurse disclosing too much information and violating patient privacy and confidentiality.

Health care organizations that use electronic and social media often have policies governing employee use in the workplace. Such policies often address the personal use of employer computers and equipment and personal computing during work hours. Policies may also address the types of websites that may or may not be accessed from employer computers. Health care organizations carefully control websites maintained by or associated with the organization, limiting what may be posted to the site and by whom. For an example of policy guidelines, visit <http://sharing.mayoclinic.org/guidelines/for-mayo-clinic-employees/>.

The employer's policies usually do not address the nurse's use of social media outside the workplace, though nurses who use social media inappropriately in that situation may face serious consequences.

Confidentiality and Privacy

To understand the limits of appropriate use of social media, one must understand confidentiality and privacy in the health care context. Confidentiality and privacy are related but distinct concepts. Any patient information a nurse learns during the course of treatment must be safeguarded by the nurse. Such information may be disclosed only to other members of the health care team for health care purposes. Confidential information should be shared only when one has the patient's informed consent, when disclosure is legally required, or when a failure to disclose could result in significant harm. Beyond these limited exceptions, the nurse's obligation to safeguard confidential information is universal.

Privacy relates to the patient's expectation and right to be treated with dignity and respect. Effective nurse-patient relationships are built on trust. Patients need to be confident that their most personal information and their basic dignity will be protected by the nurse. Patients will be hesitant to disclose personal information if they fear it will be disseminated beyond those who have a legitimate need to know. Any breach of this trust, even inadvertent, damages the nurse-patient relationship and the general trustworthiness of the profession of nursing.

Federal law reinforces and further defines privacy through the Health Insurance Portability and Accountability Act (HIPAA). HIPAA regulations are intended to protect patient privacy by defining individually identifiable information and establishing how the information may be used, who may use it, and under which circumstances it may be used. Individually identifiable information includes any information that relates to the past, present, or future physical or mental health of an individual or enough information to lead someone to believe the information could be used to identify an individual.

Breaches of patient confidentiality or privacy can be intentional or inadvertent and can occur in a variety of ways. Nurses may breach confidentiality or privacy by posting information using social media. Examples include making comments about a patient who is described with sufficient detail to be identified, referring to patients in a degrading or demeaning manner, and posting video or photos of patients without consent or for non-health-related purposes.

Consequences

The consequences of a nurse's inappropriate use of social and electronic media vary and depend in part on the nature of the nurse's conduct.

BON Consequences

Instances of inappropriate use of social and electronic media may be reported to the BON. The laws outlining the basis for disciplinary action vary among jurisdictions. Depending on the laws

of a jurisdiction, a BON may investigate reports of inappropriate disclosures on social media by a nurse on the following grounds:

- Unprofessional conduct
- Unethical conduct
- Moral turpitude
- Mismanagement of patient records
- Revealing a privileged communication
- Breach of confidentiality

If the BON finds the allegations to be true, the nurse may face disciplinary action, including a reprimand or sanction, an assessment of a monetary fine, or a temporary or permanent loss of licensure.

Other Consequences

Improper use of social media by nurses may violate state and federal laws established to protect patient privacy and confidentiality. Such violations may result in civil and criminal penalties, including fines and jail time. A nurse may face personal liability. A nurse can be sued for defamation, invasion of privacy, or harassment. Particularly flagrant misconduct on social media websites may also raise liability under state or federal regulations focused on preventing patient abuse or exploitation.

If the nurse's conduct violates the policies of the employer, the nurse may face employment consequences, including termination. Additionally, the actions of the nurse may damage the reputation of the health care organization or subject the organization to a lawsuit or regulatory consequences.

The misuse of social media can also adversely affect team-based patient care. Online comments regarding coworkers, even if posted from home during non-work hours, may constitute lateral violence, which is receiving greater attention as more is learned about its impact on patient safety and quality clinical outcomes. Lateral violence includes disruptive behaviors of intimidation and bullying (Stanley, Martin, Michel, Welton, & Nemeth, 2007), which may be perpetuated in person or via the Internet, sometimes referred to as cyber-bullying. Such activity causes concern for current and future employers and regulators because of the patient-safety ramifications.

The line between speech protected by labor laws and the First Amendment and the ability of an employer to impose expectations on employees outside of work is still being determined (National Labor Relations Board, 2011). Nonetheless, inappropriate comments can be detrimental to a cohesive health care delivery team and may result in sanctions against the nurse.

Common Myths and Misunderstandings About Social Media

Although instances of intentional or malicious misuse of social media have occurred, in most cases, inappropriate disclosure or posting is unintentional. A number of factors may contribute to a nurse inadvertently violating patient privacy and confiden-

tiality while using social media. Contributing factors include the following:

- *A mistaken belief that the communication or posting is private and accessible only by the intended recipient.* The nurse may not recognize that content, once posted or sent, can be disseminated to others. In fact, the terms for using a social media site may include an extremely broad waiver of rights to limit use of the content. One such waiver states, "By posting user content to any part of the site, you automatically grant the company an irrevocable, perpetual, nonexclusive transferable, fully paid, worldwide license to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part), distribute such user content for any purpose" (Privacy Commission of Canada, 2007).
- *A mistaken belief that content deleted from a site is no longer accessible.* In fact, Web administrators can retrieve almost anything that has been deleted, and the information can be subpoenaed by courts of law.
- *A mistaken belief that disclosing private or confidential information about patients is harmless if the communication is accessed only by the intended recipient.* Such disclosure is still a breach of confidentiality and represents unprofessional conduct.
- *A mistaken belief that discussing or referring to patients is acceptable if they are not identified by name, but by a nickname, room number, diagnosis, or condition.* Such disclosure is also a breach of confidentiality and demonstrates disrespect for patients' dignity.
- *Confusion regarding a patient's right to disclose personal information (or a health care organization's right to disclose otherwise protected information with a patient's consent) and the need for health care providers to refrain from disclosing patient information without a care-related need for the disclosure.*
- *The ease of posting and the commonplace nature of sharing information via social media.* These two factors may appear to blur the line between one's personal and professional lives. The quick, easy, and efficient technology enabling use of social media reduces the amount of time needed to post content and to consider the appropriateness of the post and the ramifications of inappropriate content.

New Guidelines: How to Avoid Problems

With awareness and caution, nurses can avoid inadvertently disclosing confidential or private information about patients. Regulatory bodies, educational programs, and employers are encouraged to review the guidelines below; modify them to comport with other, existing statements and applicable laws; and share them with nurses and nursing students.

The following guidelines from the NCSBN are intended to minimize the risks of using social media:

- Nurses must recognize that they have an ethical and legal obligation to maintain patient privacy and confidentiality at all times.

- Nurses are prohibited from transmitting by way of any electronic media any patient-related information or image that is reasonably anticipated to violate patient rights to confidentiality or privacy or to otherwise degrade or embarrass the patient.
- Nurses should not share, post, or otherwise disseminate any information, including images, about a patient or information gained in the nurse-patient relationship with anyone unless there is a patient care-related need to disclose the information or other legal obligation to do so.
- Do not identify patients by name or post or publish information that may lead to the identification of a patient. Limiting access to postings through privacy settings is not sufficient to ensure privacy.
- Do not refer to patients in a disparaging manner, even if they are not identified.
- Do not take photos or videos of patients on personal devices, including cell phones. Follow employer policies for taking photographs or video of patients for treatment or other legitimate purposes using employer-provided devices.
- Maintain professional boundaries in the use of electronic media. The nurse has the obligation to establish, communicate, and enforce professional boundaries with patients in the online environment. Nurses should use caution when having online social contact with patients or former patients. Online contact with patients or former patients blurs the distinction between a professional and personal relationship. The fact that a patient may initiate contact with the nurse does not permit the nurse to engage in a personal relationship with the patient.
- Consult employer policies or an appropriate leader within the organization for guidance regarding work-related postings.
- Promptly report any identified breach of confidentiality or privacy.
- Be aware of and comply with employer policies regarding the use of employer-owned computers, cameras, and other electronic devices and the use of personal devices in the workplace.
- Do not make disparaging remarks about employers or coworkers. Do not make threatening, harassing, profane, obscene, sexually explicit, racially derogatory, homophobic, or other offensive comments.
- Do not post content or otherwise speak on behalf of the employer unless authorized to do so, and follow all applicable policies of the employer.

Conclusion

Social and electronic media possess tremendous potential for strengthening personal relationships and providing valuable information to health care consumers. Regulatory agencies, employers, and schools of nursing need to develop policies and guidelines regarding the appropriate use of social media by nurses. Nurses should be mindful of employer policies, relevant state and federal laws, and professional standards regarding pa-

tient privacy and confidentiality and their application to social and electronic media. Nurses need to be aware of the potential ramifications of disclosing patient-related information via social media. By being careful and conscientious, nurses may enjoy the personal and professional benefits of social and electronic media without violating patient privacy and confidentiality.

References

- Anderson, J., & Puckrin, K. (2011). Social network use: A test of self-regulation. *Journal of Nursing Regulation*, 2(1), 36–41.
- Fraser, R. (2011). *The nurse's social media advantage: How making connections and sharing ideas can enhance your nursing practice*. Indianapolis, IN: Sigma Theta Tau.
- Genova, G. L. (2009). No place to play: Current employee privacy rights in social networking sites. *Business Communication Quarterly*, 72, 97–101.
- Klich-Hearrt, E. I., & Prion, S. (2010). Social networking and HIPAA: Ethical concerns for nurses. *Nurse Leader*, 8(2), 56–58.
- Lehavor, K. (2009). "My Space" or yours? The ethical dilemma of graduate students' personal lives on the Internet. *Ethics and Behavior*, 19(2), 129–141.
- National Labor Relations Board. (2011). Settlement reached in case involving discharge for Facebook comments. Retrieved from www.nlrb.gov/news/settlement-reached-case-involving-discharge-facebook-comments
- National Council of State Boards of Nursing. (2011). White paper: A nurse's guide to the use of social media. Retrieved from www.ncsbn.org/Section_II.pdf
- Prinz, A. (2011). Professional social networking for nurses. *American Nurse Today*, 6(7). Retrieved from www.americannursetoday.com/article.aspx?id=8016&fid=7986
- Privacy Commission of Canada. (2007). Privacy and social networks [Video file]. Retrieved from <http://www.youtube.com/watch?v=X7gWEgHeXcA>
- Royal College of Nursing. (2009). Legal advice for RCN members using the Internet. Retrieved from www.rcn.org.uk/__data/assets/pdf_file/0008/272195/003557.pdf
- Skiba, D. J., Connors, H. R., & Jeffries, P. R. (2008). Information technology and the transformation of nursing education. *Nursing Outlook*, 56(5), 225–230.
- Spector, N. (2010). Boundary violations via the Internet. *Leader to Leader*: Retrieved from www.ncsbn.org/L2L_Spring2010.pdf
- Stanley, K. M., Martin, M. M., Michel, Y., Welton, J. M., & Nemeth, L. S. (2007). Examining lateral violence in the nursing workforce. *Issues in Mental Health Nursing*, 28(11), 1247–1265.
- Trossman, S. (2010). Sharing too much? Nurses nationwide need more information on social networking pitfalls. *American Nurse Today*, 5(11), 38–39.

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