



# LinkedIn Post

## Risk Management Reminders for Online Marketing

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Since my original post on physicians' online marketing, I've received requests for more information on the topic. So here are my expanded thoughts -

### Websites

Websites can be a great way to market your practice online. In terms of professional liability, the greater the interaction on a physician's website, the greater the risk. A simple, non-interactive practice information website or online practice brochure has very low risk.

Potential risk areas include:

- **Inadvertent establishment of a treatment relationship:** If an individual submitted a psychiatric question to you, and you responded, it could be viewed by that individual to be treatment advice, which could inadvertently establish a physician-patient relationship.
- **Patient testimonials:** You should exercise extreme caution when soliciting patients about testimonials, particularly in terms of ethical obligations and legal requirements.
  - › Ethically, it could be viewed as putting a patient in a situation where he did not feel he could say no. According to the American Medical Association, testimonials as to the physician's skill or quality of professional services tend to be deceptive when they don't reflect the results that patients with conditions comparable to the testimoniant's condition generally receive. And, as pointed out American Psychiatric Association's Opinions of the Ethics Committee on the Principles of Medical Ethics, informed consent for testimonials is a problem because it cannot be easily withdrawn.
  - › States can, as West Virginia has done, prohibit physician advertising that uses testimonials.

The risk management advice is:

- Ensure website content is current and accurate.
- Comply with applicable state law requirements related to physician websites.
- If you are a Covered Entity under HIPAA, post your Notice of Privacy Practices on your website.

- Do not violate intellectual property law when posting materials from other sources.
- If you link to outside sources, link only to credible websites and post a disclaimer on your website explaining that you are not responsible for information on linked websites.
- If you are selling products on the website, ensure compliance with applicable laws and ethical standards.
- Avoid posting anything on your website that could be construed as specific treatment advice.
- Do not allow individuals to communicate with you via the website to avoid the inadvertent establishment of a treatment relationship. Current patients should communicate via a secure patient portal.
- If prospective patients can download forms, consider including a statement that doing so does not guarantee a treatment relationship will be established.
- If you have online appointment scheduling via your website, ensure all information is secure and not available for others to see. One practice learned this lesson the hard way - after having to pay \$100,000 to stop the government investigation resulting from a publicly accessible online scheduling calendar containing patient demographic and medical information.

### Online Referral Services

Online referral services, such as ZocDoc and Psychology Today, can be very appealing to psychiatrists for online marketing.

Potential risk areas include:

- **Drug-seekers:** Many psychiatrists are finding that many patients who find doctors online do not want a treatment relationship, but rather only want controlled substances.
- **Limited purpose patients:** Physicians using these types of online referral services are also finding the

patients have a purpose other than treatment in mind, such as filling out disability forms, or testifying in litigation, etc.

- **Services' use of patient information:** Be sure you know exactly what the service is doing with your patient's information. In one case, unbeknownst to the physicians, a vendor was sending follow-up emails to patients under the doctors' names, asking for feedback about the visit.
- **Services' request for testimonials:** At least one of the online referral services is very persistent in urging physicians to obtain patient testimonials – for the service's own use.

The risk management advice is:

- To dissuade potential patients who may be drug-seeking, consider adding the following language to your profile:
  - › "I check the state prescription monitoring program before I prescribe" (if your state has a prescription monitoring program)
  - › "I do not prescribe controlled substances on the first visit"
  - › "I do not prescribe for pain"
- To manage additional patient expectations, you should include other applicable statements, such as the first visit is only an evaluation to see if it is appropriate to establish a treatment relationship.
- A Business Associate Agreement (BAA) pursuant to HIPAA is necessary from the service as it will, at a minimum, store patient information. Even if you are not a covered entity under HIPAA, you should obtain the BAA to ensure the service promises to adequately protect your patients' confidentiality.

### Responding to Negative Online Reviews

Unfortunately, in today's digital world, online reviews are a fact of professional life. Fortunately, the vast majority of physician reviews are positive. But, as a psychiatrist, you have very few options when faced with a negative review.

Potential risk areas include:

- **Patient confidentiality:** Even though your patient has put it on the internet for the entire world to see, you still must maintain patient confidentiality. By addressing a review, you would be inappropriately

confirming the reviewer is a patient.

- **Contracting with patients to not post negative reviews:** One organization has suggested that its members do a contract with patients under which patients promise to not say anything negative about the physician. In exchange, the physician will give the patient confidentiality rights under HIPAA. The federal agency responsible for enforcing HIPAA learned of this contract and stepped in and clarified that patients cannot be required to agree to a gag order in exchange for confidentiality, to which they are entitled to without any such contract.
- **Astroturfing:** A creative physician realized that he could bury the negative reviews by having his staff pretend to be patients and post positive reviews. The state Attorney General learned of this and fined the practice \$300,000.

The risk management advice is:

- You can contact the website to request removal of a false review. While most review sites do not remove reviews when requested, some will consider doing so.
- If you know the identity of the poster, you could consider contacting the patient to discuss the issues raised and request that they remove the post.

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