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**HIMSS12**  
ANNUAL CONFERENCE & EXHIBITION

**Social Media, Healthcare and the Law**

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global leaders in law.

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Conflict of Interest Disclosure

Brian Balow, BA, JD  
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Have no real or apparent conflicts of interest to report.

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**Learning Objectives**

- Recognize about the different legal issues surrounding social media using real life examples
- Discuss considerations organization should make when creating a social media policy
- Analyze an example social media policy

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**Outline**

<p><b>1. Privacy</b></p> <ul style="list-style-type: none"> <li>- History</li> <li>- Foundation</li> <li>- Why It Matters Today</li> </ul>	<p><b>3. Legal Issues</b></p> <ul style="list-style-type: none"> <li>- Overview <ul style="list-style-type: none"> <li>o Federal</li> <li>o State</li> </ul> </li> </ul>
<p><b>2. Social Media</b></p> <ul style="list-style-type: none"> <li>- Description</li> <li>- Importance</li> </ul>	<p><b>4. Drafting Your Social Media Policy</b></p> <ul style="list-style-type: none"> <li>- Considerations</li> <li>- Example</li> </ul>

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**Outline**

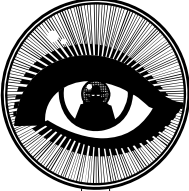
<p><b>1. Privacy</b></p> <ul style="list-style-type: none"> <li>- History</li> <li>- Foundation</li> <li>- Why It Matters Today</li> </ul>	<p><b>3. Legal Issues</b></p> <ul style="list-style-type: none"> <li>- Overview <ul style="list-style-type: none"> <li>o Federal</li> <li>o State</li> </ul> </li> </ul>
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**The Foundation of Privacy**

What is "Privacy"?





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## The Foundation of Privacy

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- **Federal Laws**
  - U.S. Constitution
  - Federal Legislation
  - State Laws
  - Common Law
  - Industry Practice



- \* International Law



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## The Foundation of Privacy

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- **U.S. Constitution**
  - *Griswold v. Connecticut* (1965) – emanations from penumbras
  - *Roe v. Wade* (1973) – the right of women to choose
  - *Whalen v. Roe* (1977) - privacy v. the public interest





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## The Foundation of Privacy

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- **U.S. Constitution: Context Matters**
  - “The Constitution does not explicitly mention any right of privacy” - *Roe v. Wade*
  - “Zones of privacy” - *Griswold v. Connecticut*
    - 1st Am.: Right of association
    - 2nd Am.: Right not to have to quarter soldiers
    - 4th Am.: Right against unreasonable search and seizure (“*expectation of privacy*”)
    - 5th Am.: Right against self-incrimination
    - 9th Am.: Preservation of unenumerated rights



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## The Foundation of Privacy

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- **U.S. Constitution: Context Matters**
  - Analogy = Potter Stewart’s famous quote, holding that the Constitution protected all obscenity except “hard-core pornography.”
  - Stewart wrote:
    - “I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But *I know it when I see it*, and the motion picture involved in this case is not that.”



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## The Foundation of Privacy

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- **U.S. Constitution: Context Matters**
  - So it goes with “privacy” under the Constitution.



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## The Foundation of Privacy

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- **Federal Legislation: Context Still Matters**
  - Targeted Information
    - Financial (GLBA)
    - Medical (HIPAA)
  - Targeted Constituency
    - Consumers (FTC Section 5)
    - Children (COPPA)
  - Specific identification of information deemed to be “private”
  - Specific identification of obligations regarding the use of particular information



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## The Foundation of Privacy

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- **State Laws**
  - Various state statutes addressing
    - Social Security Numbers
    - Drivers licenses
    - Protection of health care information
    - Recordkeeping and data destruction
    - **Breach disclosure**
- **Industry Standards**
  - PCI DSS





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## The Foundation of Privacy

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- **International Laws**
  - E.U. Privacy Directive 95/46/EC
    - Addresses the collection, use, processing, and movement of personal data
  - EU Internet Privacy Law of 2002 (Directive 2002/58/EC)
    - Protects data in electronic transactions
  - Individuals countries have their own laws





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## The Foundation of Privacy

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- **Laws Govern**
  - What information can be collected
  - How it must be stored and secured
  - Under what circumstances it can be shared
  - Under what circumstances it can be disclosed
  - Requirements for responding to data breaches and data losses
  - Penalties for data breaches and data losses



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## Outline

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<ul style="list-style-type: none"> <li>1. <b>Privacy</b> <ul style="list-style-type: none"> <li>– History</li> <li>– Foundation</li> <li>– Why It Matters Today</li> </ul> </li> <li>2. <b>Social Media</b> <ul style="list-style-type: none"> <li>– Description</li> <li>– Importance</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>3. <b>Legal Issues</b> <ul style="list-style-type: none"> <li>– Overview               <ul style="list-style-type: none"> <li>○ Federal</li> <li>○ State</li> </ul> </li> </ul> </li> <li>4. <b>Drafting Your Social Media Policy</b> <ul style="list-style-type: none"> <li>– Considerations</li> <li>– Example</li> </ul> </li> </ul>
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## What is Social Media?

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- **A method of communication**
- **Create and disseminate ideas and information**
  - Instant
  - Efficient
  - Low Cost (Mayo Clinic spent \$1500)
  - User-generated content
  - Collaborative
  - No degree required, everyone is an expert
  - Anyone can make a difference





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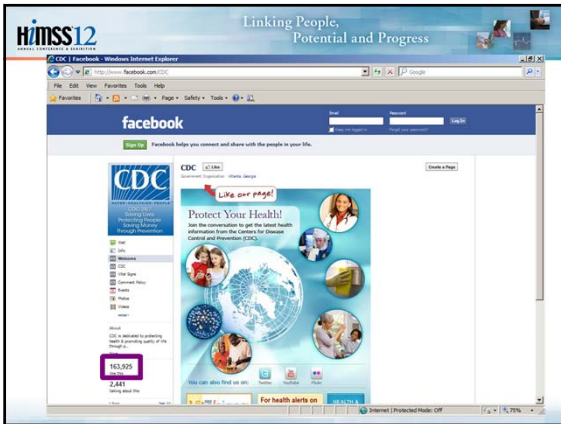
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## Some Examples

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- Facebook
- Twitter
- YouTube
- Medscape (from WebMD)
- Sermo
- Healthy Place (for mental health)
- Patients Like Me





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## Why does Social Media Matter?

- **Facebook (Facebook Statistics)**
  - More than 800 million active users (compared to 500 million last year)
  - Average user has 130 "friends"
  - More than 7 million apps and websites are integrated with Facebook

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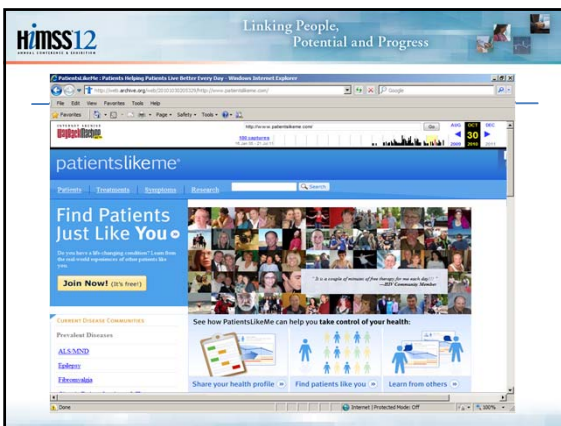
## Why does Social Media Matter?

- **Twitter (Mark Hachman, PC Mag, 2011)**
  - More than 100 million active users (compared to 75 million users last year)
    - o Which is an 82% increase since the beginning of 2011
  - About 50 million tweet on a daily basis
  - On pace to add 26 million new users before the end of the year

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## Why does Social Media Matter?

- **Patients Like Me (Health 2.0 Conference, Our Speakers, 2010)**
  - Last year:
    - o More than 45,000 users
    - o Patients voluntarily revealing protected health information
    - o Tracking 19 diseases



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## Why does Social Media Matter?

- **Patients Like Me**
  - Has *completely revamped* itself:
    - o More than 118,000 patients (*compared to 45,000*)
    - o Tracking 500+ conditions (*compared to 19*)
    - o Patients *voluntarily and publicly* revealing their conditions

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## Why does Social Media Matter?

- **Patients Like Me**
  - Individuals voluntarily disclosing their
    - o Conditions (bipolar, ALS, MS, ADHD, depression, HIV)
    - o Age
    - o Pictures
    - o Treatment protocols
    - o Time have had condition

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## Why does Social Media Matter?

- **Patients want to be in control**
  - Of the 74% of adults who use the internet
    - o 80% of internet users have looked online for information about health related topics
    - o 34% of internet users, or 25% of adults, have read someone else's commentary or experience about health or medical issues on an online news group, website, or blog
    - o 24% of internet users, or 18% of adults, have consulted online reviews of particular drugs or medical treatments


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## Why does Social Media Matter?

- **Easy**
- **+ Fast**
- **+ Popular**
- **Lots of Potential for TROUBLE**


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## Examples of Trouble - Starbucks




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## Examples of Trouble - Comcast




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## Examples of Trouble - Philly Police



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## Examples of Trouble

- **Federal Aviation Administration v. Cooper**

  - Case currently pending before the **Supreme Court** (*args heard on Nov. 25, 2011*)
  - "Operation Safe Pilot"
    - o FAA and the SSA teamed up to find pilots who hid medical conditions
    - o Exchanged medical information about thousands of pilots (45,000 in N. Cali.) and found ~3,200 violators
    - o **SSA disclosed that pilot was HIV positive and was receiving disability benefits**
    - o Failure to disclose is a felony (pleaded guilty, 2 yrs probation, \$1,000 fine, \$200K in other legal fees)

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## Examples of Trouble

- **Federal Aviation Administration v. Cooper**
  - Pilot sued relying on the **Privacy Act of 1974**
    - o governs collection, maintenance, use, and sharing of PII maintained by federal agencies
    - o prohibits the disclosure of PII without prior written consent of the subject individual, unless the disclosure is pursuant to one of 12 statutory exceptions
    - o **SSA admits violated the law**
      - but argues that emotional damages (humiliation, embarrassment, mental anguish) are not "actual damages"





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## Examples of Trouble

- **Federal Prosecution** (Ag's Office, WD Penn. 2010)
  - Pennsylvania
  - UPMC Shadyside Hospital
  - Employee selling PHI for personal gain (names, birth dates, social security numbers)
  - 14 count indictment (HIPAA and SSA)
  - Possible punishment: 80 years, \$4,730,000 or both





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### Examples of Trouble

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- **Federal Prosecution cont.** (Nov. 2, 2011)
  - Virginia
  - Psychiatrist on trial for disclosing PHI without authorization
  - Facts:
    - o Patient went to see psychiatrist after traumatic incident
    - o Patient complained about psychiatrist, who is terminated as a result
    - o A few months later, patient put on a psychiatric hold, psychiatrist finds out and notifies her employer





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### Examples of Trouble

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- **Federal Prosecution cont.**
  - The Department of Justice or Attorneys' General tend to prosecute when
    - o Medical records and identities are stolen to **commit healthcare fraud**
    - o Medical records were stolen to **embarrass** or threaten to embarrass someone
      - 2011 Arizona case
      - 2009 Indianapolis case
    - o Medical records were stolen to **commit fraud against private businesses**





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### Examples of Trouble

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- **Federal Prosecution cont.**
  - During 2011, Federal prosecutors working with the FBI brought charges cases charging 16 individuals and obtained 16 convictions
  - Federal prosecutions are expected to continue
    - o As of early **November 2011**, the FBI has **56 pending investigations** associated specifically with violations of the **HIPAA statute**
    - o Actual number is higher because the above numbers do not reflect cases where the HIPAA statute was not the primary one charged





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### Examples of Trouble

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- **Indiana**
  - Certified nursing assistant took a picture of a paraplegic patient in a compromising position
  - **CNA says to her coworker:** "This is too funny. I need to take a picture of this."
  - **Coworker:** Please don't take the picture. Coworker notices picture on Facebook wall. *Reports to employer* (as required under HIPAA/HITECH!)





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### Examples of Trouble

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- **Indiana**
  - **Problem:** revealed PHI
  - **Results for CNA:**
    - o Fired by employer after she admitted taking the photo
    - o Referred to the State Department of Health which oversees CNAs
    - o Arrested and facing a voyeurism charge





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### Examples of Trouble

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- **Rhode Island** (*Boston Globe, 2011*)
  - First (publicized) incident involving a **doctor**
  - Westerly Hospital fired doctor for posting information about a patient on her **Facebook** account
  - Reprimanded by the Rhode Island Medical Board for "**unprofessional conduct**"
  - **Did not mention name, but Board concluded revealed enough for others to identify the patient**



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## Examples of Trouble


- **Mississippi** (WLBT 3, Dec. 2009)
  - **Governor tweeted:** "Glad the Legislature recognizes our dire fiscal situation. Look forward to hearing their ideas on how to trim expenses."
  - **Nurse tweeted back:** "Schedule regular medical exams like everyone else instead of paying UMC employees overtime to do it when clinics are usually closed."
  - **Problem:** Nurse *indirectly* referenced PHI because she *tweeted back* to the Governor



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## Examples of Trouble


- **Iowa** (Des Moines Register, 2010)
  - Nurse fired because was using Facebook to exchange information about a patient with another health professional without consent
  - *No name, but enough information to identify patient*



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## Examples of Trouble


- **California**
  - St. Mary Medical Center (LA Times, Aug. 2010)
    - o Nurses from ER posted photo of dying patient on Facebook pages
    - o Coworkers reported to hospital
    - o California Department of Public Health Department was investigating
  - "Rebekah Child, an RN at Cedars-Sinai's emergency room, told the *Times* that **she knows many nurses who write about patients on Facebook. Some even do it while they're on the job.**"



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## Examples of Trouble


- **California**
  - Employees improperly accessing records
    - o **Fines required by state law**
      - SB 541 (2008) - fines for disclosing private medical information range **up to \$250,000 per reported event**
  - *Cedars-Sinai Medical Center* (2008) - employee in billing dept. stole 1,000+ records, committed fraud
  - *Kaiser Permanente (Bellflower)* (2009)
    - o **50,000** in May 2009; employees snooping on medical records of Nadya Suleman
    - o **fined \$187,500** in July 2009; 4 patients impacted



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## Examples of Trouble

- **California**
  - *UCLA Ronald Reagan Medical Center* (2010) - **fined \$95,000** for employees snooping in Michael Jackson's records
  - *Community Hospital of San Bernardino, San Bernardino, San Bernardino County* (2010) - **fined \$250,000** after facility **failed to prevent** unauthorized access of 204 patients records by **one employee**
  - *UCLA & Community Hospital* - 2 of 6 fines issued in one day -- **penalties totaled \$675,000**



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## Examples of Trouble

- **Lawsuit**
  - **University of Louisville** (April 2011)
    - o Dismissed nursing student from its program after she made unflattering remarks on her MySpace page after watching a live birth
    - o Based on violating its Honor Code and the course's confidentiality agreement
    - o The student sued alleging First (free speech) and Fourteenth (due process) Amendment violations
    - o She won on summary judgment
    - o The decision was reversed on appeal and remanded to the District Court



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## Examples of Trouble

- **Lawsuit**
  - **University of Louisville** (Nov 2011)
    - During the pendency of the appeal
      - Yoder was reinstated to the nursing program pursuant to the injunction
      - Yoder completed her coursework
      - Yoder obtained her nursing degree
      - Yoger left the University
    - Generally, case would be moot
      - But here, issue of damages was not initially settled
      - University has another 30 days to respond
      - Stay tuned!

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## What's Really the Problem?

- **Blurring of the lines between professional and personal**
  - People do not consider the potential impact of their communications (ignorance is not bliss)
  - Personal opinion v. professional advice
  - Eric Schmidt, CEO of Google, prediction to the WSJ
- **Once you send, you CAN'T UNSEND**
  - WayBackMachine - <http://www.archive.org>

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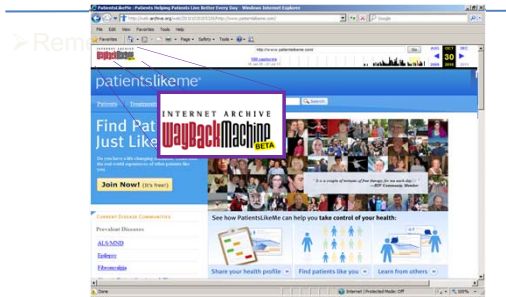
## What's Really the Problem?

- Remember this picture?

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## What's Really the Problem?

➤ Remember this picture?



The screenshot shows the PatientsLikeMe website interface. At the top, there's a navigation bar with 'patientslikeme' and 'Find Pat Just Like' buttons. Below that, there's a search bar with 'ALS/MSD' entered. A 'WayBackMachine' watermark is overlaid on the search results area. The search results show a list of patients with their profiles and photos. There are also some social media sharing options at the bottom.

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## What About the Good?

- Hospitals sharing information – as of October 2011, hospitals accounted for:
  - **575** YouTube channels (compared to **398** in August 2010)
  - **1068** Facebook pages (compared to **631** in August 2010)
  - **814** Twitter accounts (compared to **634** in August 2010)
  - **149** Blogs (compared to **87** in August 2010)
- **Good for patients because** they can stay informed, have more control over their own healthcare and learn **from actual experts**

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## Outline

1. **Privacy**
  - History
  - Foundation
  - Why It Matters Today
2. **Social Media**
  - Description
  - Importance
3. **Legal Issues**
  - Overview
    - Federal
    - State
4. **Drafting Your Social Media Policy**
  - Considerations
  - Example



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## Legal Issues with Social Media

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### Privacy Issues





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## Legal Issues with Social Media: Privacy

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- **State and Federal Laws**
  - Strict privacy requirements and related data security laws and regulations
  - Revealing that the person is a patient is itself a problem
  - Limits your ability to respond to others online because you would be disclosing PHI



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## Legal Issues with Social Media: Privacy

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- **HIPAA/HITECH**
  - Privacy Rule
  - Keep protected health information secure
  - Disclosure allowed under certain defined circumstances
  - **HIPAA Revision???**



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## Legal Issues with Social Media: Privacy

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- **HIPAA Complaint Facts**
  - **HIPAA Privacy Rule** - From April 2003 - Sept. 2011, HHS received **64,000+ complaints**
  - **HIPAA Security Rule** - Since Oct. 2009, OCR has received **470+ complaints**
  - Of the above, ~22,500 eligible for enforcement
    - o ~15,000 - OCR required CEs to take corrective actions
    - o ~7,500 - OCR found no violation



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## Legal Issues with Social Media: Privacy

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- **HIPAA Complaint Facts Cont.**
  - Most common issues
    - o Employee misbehavior
    - o Improper disposal of records
    - o Organizations failing to give individuals copies of their records



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## Legal Issues with Social Media: Privacy

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- **HITECH Breach (HHS and FTC)**
  - "the **unauthorized** acquisition, access, use, or **disclosure** of protected health information which **compromises** the **security or privacy** of such information, **except** where an unauthorized person to whom such information is disclosed would **not** reasonably have been able to **retain** such information"
  - If posted online, **retained** for a very long time
  - Not covered by any of the breach exceptions


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### Legal Issues with Social Media: Privacy


- **HITECH Breach (HHS and FTC) –**
  - *Who is under Obligations?*
    - Covered Entity
    - Business Associate
    - Subcontractor Requirements


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### Legal Issues with Social Media: Privacy


- **HITECH Breach (HHS and FTC) –**
  - *What are you required to do?*
    - Required to investigate
    - Required to give notice
    - Required to reprimand
    - Required to record/notify Secretary


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### Legal Issues with Social Media: Privacy


- **Investigation and Notice**
  - CEs must provide notification (where warranted) “without unreasonable delay” but in no event longer than 60 days after a breach is “discovered”
  - A breach is **discovered** when it is **known**, or by exercise of reasonable diligence, would have been known *by a member of the covered entity’s workforce*
  - People in your workforce who spot a breach on another employee’s site start the clock running


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### Legal Issues with Social Media: Privacy


- **State AG’s have power to enforce HITECH breach provisions**
  - At last year’s presentation, noted enforcement by Connecticut, Indiana and Vermont
  - For those AG’s, that are just learning, OCR has kindly offered training sessions that took place:
    - Dallas, Texas- April 4 & 5, 2011
    - Atlanta, Georgia - May 9 & 10, 2011
    - Washington, DC (metro area) - May 19 & 20, 2011
    - San Francisco, CA- June 13 & 14, 2011
    - In attendance? **Reps from 45+ States and territories**


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### Legal Issues with Social Media: Privacy

- **State AG’s have power to enforce HITECH breach provisions**
  - In 2011, OCR provided technical assistance on enforcement to the State Attorneys General in:
    - California
    - Connecticut
    - Illinois
    - Massachusetts
    - Michigan
    - Rhode Island
    - South Carolina
    - Texas
    - Washington
    - Wyoming


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### Legal Issues with Social Media: Privacy

- **HIPAA Breach Facts**
  - As of Nov. 12, 2011, OCR received and posted **364 reports** of breaches involving **more than 500 individuals**
    - Each of the 6 largest breaches this year impacted between 175,000 - 4.9 million individuals
    - Reports from organizations in the Midwest
      - Illinois - 17 / 242,682
      - Indiana - 11 / 66,938
      - Iowa - 1 / 19,222
      - Michigan - 11 / 118,596
      - Minnesota - 10 / 47,804
      - Wisconsin - 5 / 16,888

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## Legal Issues with Social Media: Privacy

- **HIPAA Breach Facts Cont.**
  - As of Nov. 4, 2011, OCR received **36,000+** reports involving **fewer than 500 individuals**
  - Congress is not happy about the lack of enforcement
    - o Senate Judiciary Committee, Subcommittee on Privacy, Technology and the Law (Hearing from November 9, 2011)

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## HITECH Act Penalties: Privacy

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## Cost of Addressing a Breach

- **Expensive to clean up a breach**
  - \$268 per record - cost to rapidly respond to average data breach (*Ponemon Institute, 2010*)

Breach Type	Cost 2010	Cost 2009
First timer YES	\$326	\$228
Malicious or criminal attack YES	\$318	\$215
Third party mistake YES	\$302	\$217
Quick response YES	\$288	\$219
Lost or stolen device YES	\$258	\$225
Security effectiveness NO	\$255	\$207
CISO leadership NO	\$232	\$236
External consulting support NO	\$229	\$231
Negligence NO	\$227	\$237
System failure NO	\$216	\$225
System failure YES	\$210	\$166

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## Legal Issues with Social Media: Privacy

- **High stakes if employees violate patient's privacy**
  - Liability under HIPAA and state laws, including **criminal liability** (meaning jail time)
  - PR problems
  - \$\$\$

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## Legal Issues with Social Media: Privacy

### State Laws

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## Legal Issues with Social Media: Privacy

- **Numerous state laws may be implicated**
  - Data Record Privacy and Disclosure
    - o Mental illness (e.g., Mental Health Code, Act 258 of 1974, MCL 330.1001 *et seq.*)
    - o HIV status (e.g., Acquired Immune Deficiency Syndrome, Iowa Code § 141A)
    - o Genetic information (e.g., IL - Genetic Information Privacy Act, 410 ILCS 513)
  - Several states have a patient bill of rights (e.g., MN Healthcare Bill of Rights, Minn. Stat. §§ 144.651 *et seq.*)

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## Legal Issues with Social Media

### Other Legal Issues



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## Other Legal Risks

- **Discrimination**
- **Harassment**
- **Stored Communications Act of 1986**
  - Violation to gain unauthorized access
  - Employees with “private” pages

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## Other Legal Risks

- **Negligence / Malpractice**
- **Defamation**
- **Intellectual property infringement**
- **Afterhours work by nonexempt employees**
- **FTC Endorsement Guidelines**

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## Other Legal Risks

- **Malpractice**
  - Is tweeting during a medical procedure negligence?
- **Litigation**
  - Tweets discoverable
  - Facebook posts discoverable (probably)

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## National Labor Relations Act

- **The NLRB has been the hotbed of social media activity**
  - **National Labor Relations Act**
    - Enacted to protect employees’ rights to collective bargaining
    - But has been broadly applied to include employers who do not have unions



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## National Labor Relations Act


- **The NLRB has been the hotbed of social media activity**
  - Since 2010, has issued about 15 opinions on various employer actions related to handling of situations involving social media
  - **Typical case:** employee sees something doesn’t like, posts on Facebook, employer finds out and . . .

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## National Labor Relations Act

> The NLRB has been the hotbed of social...

- Since 2 various situation
- Typical like, po



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## National Labor Relations Act

> But, employers **cannot** fire employees when employees are engaging in

- Concerted activity
  - o Employee acts "with or on the authority of **other employees**, and not solely by and on behalf of the employee himself"
- Protected activity
  - o Implicates **working conditions** (e.g., salary, hours, safety, etc.)

- *Protection can be lost under certain circumstances*

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## Outline

- 1. Privacy**
  - History
  - Foundation
  - Why It Matters Today
- 2. Social Media**
  - Description
  - Importance
- 3. Legal Issues**
  - Overview
    - o Federal
    - o State
- 4. Drafting Your Social Media Policy**
  - Considerations
  - Example

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## Why Have a Social Media Policy?

- > To protect your patients' rights
- > To instill professionalism throughout your enterprise
- > To protect your organization from liability
- > To protect your employees from liability

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## Why Have a Social Media Policy?

> If the organization **does not know** that employees are posting PHI but knows of the popularity of social networking websites and that its employees use such websites

- Under Proposed HIPAA changes – may be "willful neglect" if no policies and procedures in place
- In the HIPAA **proposed** rule, HHS focused on lack of policies and procedures

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## Why Have a Social Media Policy?

> Rogue employee defense

- Can shield employers from liability to the extent the conduct occurred in spite of and contrary to reasonable safeguards, including **documented training**



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## Why Have a Social Media Policy?

- *Will not work if*
  - Cannot demonstrate a strict policy
  - Cannot demonstrate training structure designed to prevent the "rogue" conduct

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## Formulating a Social Media Policy

- **What is your stance?**
  - Does your organization want to allow the use of social media? If so, with whose "tools"?
  - Allow use only under certain circumstances?
- **Review current communications policies and procedures**
  - Can generally be modified to address social media
  - Good opportunity to review all policies

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## Formulating a Social Media Policy

- **Focus on what employees can do**
  - Be transparent and authentic
  - Be responsible for what you write
  - Protected PHI and proprietary information
  - Use common sense and common courtesy
  - Think twice before you hit post!

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## Formulating a Social Media Policy

- Be consistent with your policies
- Enforce your policies – having policies will not help if they are not properly enforced
- Review policies periodically
- **EMPLOYEES MUST BE AWARE OF POLICIES AND RAMIFICATIONS OF VIOLATIONS**

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## Formulating a Social Media Policy

- **Complying with the NLRB Act**
  - Policies may not be overly broad - examples of overly broad language
    - o prohibit employees from using any social media that **may violate, compromise, or disregard** the rights and reasonable expectations as to **privacy or confidentiality of any person or entity**
    - o prohibit any communication or post that constitutes **embarrassment, harassment or defamation of the organization** or of any organization employee, officer, board member, representative, or staff member
    - o making statements that **lack truthfulness** or that **might damage the reputation or goodwill** of the organization, its staff, or employees

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## Formulating a Social Media Policy

- **Complying with the NLRB Act**
  - **Why** were those examples overly broad?
    - o **NO** definition or guidance as to what is private or confidential
    - o **NO** exclusion for protected activities
      - ▶ Employees **could reasonably interpret policies to prohibit protected** employee **discussions** on wages and other terms and conditions of employment

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## Formulating a Social Media Policy

- **Complying with the NLRB Act**
  - No right to:
    - o Make untrue statements
    - o Disloyal statements to damage a company's reputation
  - **BUT**, if you investigate, and the above statements are made in the **context of a group of employees discussing working conditions**, call your attorney *prior to* taking action

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## Policy Example: Kaiser Permanente

- Statement
- Purpose
- Scope
- Definitions
- Hosted Sites / Non-Hosted Sites
- Blogging Best Practices
  - If allow comments, see the Mayo Clinic comments policy
- Other considerations
  - Facebook
  - Twitter
  - Off Hours Discussions
  - Discussing Patients
  - Discussing Work
  - Regulatory Audit
  - Enforcement
  - Training

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## Other Policy Examples

- **Mayo Clinic**
  - Participation Guidelines for the Public – Basic rules of the road for blogs, etc. - <http://sharing.mayoclinic.org/guidelines/>
  - Comments Policy – How the Mayo Clinic handles submitted comments - <http://www.mayoclinic.org/blogs/comment.html>
  - Guidelines for Employees & Code of Ethics - <http://sharing.mayoclinic.org/guidelines/for-mayo-clinic-employees/>

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## Other Policy Examples

- Vanderbilt University Medical Center
  - Social Media Toolkit <http://www.mc.vanderbilt.edu/root/vumc.php?site=socialmediatoolkit>
- Social Media Governance
  - <http://socialmediagovernance.com/policies.php>
  - 174 Policies available

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## Disclaimer

This presentation is informational only. It does not constitute legal or professional advice.

You are encouraged to consult with an attorney if you have specific questions relating to any of the topics covered in this presentation

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## For More Information

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