

Addressing public criticism: a potential HIPAA violation

Elise Martin¹ BA, Clifford Lober² MD JD, Jeff Benabio³ MD MBA, Steven R Feldman^{1,4,5} MD PhD

Affiliations: ¹Center for Dermatology Research, Department of Dermatology, Wake Forest School of Medicine, Winston-Salem, North Carolina, USA, ²Clinical Affiliate Associate Professor of Medicine, Department of Dermatology and Cutaneous Surgery, University of South Florida, Tampa, Florida, USA, ³Dermatology Chief of Service, Director Healthcare Transformation, Kaiser Permanente San Diego, San Diego, California, USA, ⁴Department of Pathology, Wake Forest School of Medicine, Winston-Salem, North Carolina, ⁵Department of Social Sciences & Health Policy, Wake Forest School of Medicine, Winston-Salem, North Carolina

Corresponding Author: Steven R. Feldman MD, PhD, Department of Dermatology, Wake Forest School of Medicine, Medical Center Boulevard, Winston-Salem, NC 27157-1071, Tel: 336-716-7740, Fax: 336-716-7732, Email: sfeldman@wakehealth.edu

Abstract

Although patients are able to speak openly about their healthcare experience in negative reviews, laws protecting the privacy of the patient constrain providers from responding as freely. Unfortunately, violation of this principle occurs when responding to online patient criticism. We describe a case of a physician assistant revealing protected health information of a patient in response to a critical *New York Times* article. Providers must be wary of violating **patients' privacy, even when they are criticized online. Addressing patients' concerns and neutral, caring online responses may be the physicians' best options for responding to negative reviews.**

Keywords: dermatology, dermatologic surgery, social media, patient satisfaction

Introduction

In **today's digitized era, the tenets of the Health Insurance Portability and Accountability Act (HIPAA)** are engrained into medical professionals with oftentimes equal vigor as the Hippocratic Oath. The Privacy and Security Rules ensure patient privacy in the electronic arena [1]. HIPAA stipulates that providers cannot use or disclose protected health information, even if patients reveal this information themselves. Protected health information includes individually identifiable health information, defined as **information "related to the past, present, or future**

physical or mental health or condition of an individual; the provision of health care to an **individual"** [2]. **Within the HIPAA Security Rule,** implementation of a security awareness and training program for all members of the workforce is required [2]. Most healthcare entities require training for new employees and annual education for all employees. Despite the need for, and training in compliance with, HIPAA standards, between April 2003 and September 2017, a total of 165,175 privacy rule complaints were received [3].

These complaints can go beyond accidental privacy breaches of protected health information. In the world of social media and electronic communication, anonymity promotes temerity. This is manifest in the increased violation of accepted social norms as seen in the prevalence of cyber-bullying and online aggression [4]. Whether encouraged by the brashness that an online platform affords or not, healthcare providers continue to occasionally disregard HIPAA regulations when posting in online forums. In a *ProPublica* investigation co-published in 2016 with *The Washington Post*, 1.7 million public reviews on Yelp were examined. Three thousand five hundred reviews mentioned privacy or HIPAA. Healthcare professionals, disagreeing with negative reviews posted online may retaliate and expose patient information thus violating HIPAA regulations [5]. Responses to criticism that reveal patient information not only violate HIPAA rules but also

sabotage the trust between patients and providers [6]. The prevalence of this issue is evident in multiple articles urging healthcare professionals to avoid violating HIPAA when responding to online reviews [7-11].

We present a case of a provider revealing patient information in response to a negative patient commentary in the *New York Times*.

Body of Article

In a recently online published article in the *New York Times* entitled **"Skin Cancers Rise, Along With Questionable Treatments,"** multiple patient vignettes described the lack of satisfaction with dermatologic care provided primarily by physician assistants [12]. In one such case, the patient was seen first by two young women wearing lab coats whom he assumed to be physicians and later found to be physician assistants. At his first visit, one of the physician assistants biopsied ten lesions. At his next visit one month later, the second physician assistant informed the patient he would need radiation for basal cell carcinomas on his temple, shoulder, and ear. The patient tried to argue with her by stating that in the past he was treated for this condition with a **"scrape."** **The physician assistant responded that these procedures were necessary because if the lesion above his right eye was surgically removed he might become unable to blink that eye. She also told him that radiation was required to treat the cancer on his ear so that he did not lose the entire ear. She also told him that he would need Mohs surgery to treat several of the other basal cell carcinomas. The patient never saw a physician on any of these visits. He questioned the number of biopsies that had been performed and the aggressive treatment recommended. On the day he was scheduled for surgery, he was injected with anesthetic by the second physician assistant. Afterwards, feeling apprehensive in the waiting room, he decided to not undergo the treatment. He realized he had not seen a physician and his concern that the physician assistant would be performing surgery prompted him to leave. The article concluded with the patient's decision to find a different dermatologic practice. The dermatologist whom he subsequently saw**

reassured him that superficial radiation was not indicated and proposed surgical removal of many of the previously diagnosed basal cell carcinomas. **Additionally, the dermatologist noticed "a pigmented, asymmetrical spot slightly bigger than a pencil eraser" on the patient's right shoulder, which was a malignant melanoma. It was reportedly missed by physician assistants in the four exams over a four-month period.**

Among the social media comments received was one in which the writer identified himself or herself as one of the physician assistants who saw the patient. Thereafter, he or she discussed the details of the healthcare encounter with this patient, revealing physical examination findings and other health information not mentioned in the article. Multiple commenters noted this violation of patient privacy. **One stated, "your comments are more than a flagrant violation of the HIPAA laws." Another commenter recommended retraction of the statement. The physician assistant responded that, "All of the details have already been discussed in the article, the date of visit, the procedure in question, location, etc." He spoke in detail about his own visit, to the *New York Times*, that was full of inaccuracies, which is liable on his behalf. Stating facts that strongly dispute his claims is just in rebut." To date, these comments have not been removed.**

Discussion

The scenario of HIPAA-violation is not uncommon. Although providers have been trained in the importance of maintaining patient privacy, when their expertise is questioned, the HIPAA regulations may be forgotten. When the physician assistant revealed information related to the physical health of the individual, he or she violated HIPAA regulations [2]. The appearance of this issue in the *New York Times* draws needed attention for healthcare providers to both avoid this pitfall and learn how to appropriately respond to public criticism. Several commenters identify solutions to improve understanding and avoid violating HIPAA laws; one proposed more thorough and regular employee training on HIPAA Privacy and Security policies.

To better respond, physicians should consider the three-step strategy of “Listen. Plan. Engage.” First, providers should “listen,” noting who the commenter is and the setting in which the post occurred. If the comment is insignificant, providers may do best by not responding. Additionally, listening can help physicians understand how patients experience the practice, possibly uncovering unrecognized deficiencies. Often complaints can lead to actionable advice, improving the quality of the practice. Second, providers should “plan,” deciding whether addressing the commenter in a direct conversation or responding in a public online forum would be more effective and appropriate [10]. One option is to politely acknowledge a negative review while offering further discussion to be held in a private, HIPAA-compliant setting [8]. By redirecting the conversation away from an online setting in which a patient’s right to privacy is too easily violated, providers can communicate in a more appropriate venue should they choose to respond. Finally, providers may opt to “engage,” replying to a commenter [10]. If the decision is made to engage commenters, providers should consider making efforts to utilize neutral, non-confrontational language and avoid arguing or appearing condescending [11]. Use of the phrase “I’m sorry” can recognize that the commenter is upset without necessarily agreeing with his or her statement [10]. Moreover, responding in a caring and compassionate manner can counteract the offensive post [11].

Importantly, providers should not assume that a patient’s decision to publicly reveal his or her protected health information grants providers authority to disclose this information [9]. One recommended approach would be to say, “I wish I knew who this patient was. None of my patients match the situation described. If you are this patient, please contact me so that we can address this situation together” [11]. Beyond remaining neutral and offering to help, providers can request the removal of the patient’s comment [10]. However, providers must be wary of filing suit to have the post removed, as this may result in only more attention brought to the matter, a phenomenon known as the “Streisand effect” [11].

Conclusion

The need for providers to respect HIPAA policies when countering public criticism is important since a breach in confidentiality in a public forum incites general mistrust of healthcare providers. Other replies to the purported treating physician assistant such as, “Her public comment does not inspire trust in her ability to protect patient privacy,” and, “I question your professionalism,” demonstrate this faltering trust. We present this case of HIPAA violation to encourage providers to respond appropriately to criticism in the public online sector in order to uphold not only HIPAA standards of patient privacy, but also the relationship of trust on which the patient-physician relationship is founded.

References

1. U.S. Department of Health and Human Services. HIPAA for Professionals. 2017. <https://www.hhs.gov/hipaa/for-professionals/index.html>. Accessed on January 5, 2108.
2. 45 C.F.R. § 164.308(a)(5)(i) (2013).
3. U.S. Department of Health and Human Services. Numbers at a Glance – Current. 2017. <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/data/numbers-at-a-glance/index.html>. Accessed on January 5, 2108.
4. David-Ferdon C, Hertz MF. Electronic media, violence, and adolescents: an emerging public health problem. *J Adolesc Health*. 2007;41(6):S1-5. [PMID: 18047940].
5. Ornstein C. Doctors fire back at bad Yelp reviews – and reveal patients’ information online. *The Washington Post*. 2016. https://www.washingtonpost.com/news/to-your-health/wp/2016/05/27/docs-fire-back-at-bad-yelp-reviews-and-reveal-patients-information-online/?utm_term=.ff7da19ac87d. Accessed on January 5, 2108.
6. Lee V. Transparency and Trust - Online Patient Reviews of Physicians. *N Engl J Med*. 2017;376(3):197-9. [PMID: 28099823].
7. Henry TA. How to respond to bad online reviews. *AMA Wire*. 2016. <https://wire.ama-assn.org/life-career/how-respond-bad-online-reviews>. Accessed on January 5, 2108.
8. Gin R. Establishing and Protecting Your Online Reputation. *Fam Pract Manag*. 2015;22(6):29-32. [PMID: 26761082].
9. Segal J. The Right Way to Fight Bad Online Reviews. *Medscape*. 2014. <https://www.medscape.com/viewarticle/835077>. Accessed on January 5, 2108.
10. Benabio MJ. How to handle negative reviews. *Dermatology News*. 2016. <http://www.mdedge.com/dermatologynews/article/59169/health-policy/how-handle-negative-reviews>. Accessed on January 5, 2108.

11. Lober CW. Responding to online defamation. *Dermatology World*. 2017;27(10):24-5.
12. Hafner K, Palmer G. Skin Cancers Rise, Along With Questionable Treatments. *New York Times*. 2017.

<https://www.nytimes.com/2017/11/20/health/dermatology-skin-cancer.html>. Accessed on January 5, 2108.