

# DENTAL EXPRESSIONS®

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## Social Media Liability: Understanding and Addressing the Risks

According to the American Dental Association 2010 survey of dentists on their use of technology and social media, almost 60 percent of practitioners had established a primary practice Web site in order to educate the public, connect with potential patients and enhance communication with current patients.<sup>1</sup> A growing number of dentists are now expanding their networking ability by linking their practice-based Web sites to the following types of media platforms:

- *social networking sites* (e.g., Facebook, MySpace, Tagged), which promote mutual sharing of news and information, as well as marketing messages
- *video and photo sharing sites* (e.g., YouTube, Flickr, Google Docs), which facilitate exchange of footage and images
- *micro-blogging sites* (e.g., Twitter), which encourage interaction via short published messages and links
- *weblogs* (e.g., corporate and personal blogs, as well as blogs hosted by traditional media publications), which communicate ideas and opinions in journal format

- *business networks* (e.g., LinkedIn, Xing), which connect job seekers and potential partners to the practice or organization, and colleagues with each other
- *forums and discussion boards* (e.g., Whirlpool, Yahoo! Groups, Google Groups), which support sustained dialogue among community members

While social media tools may be an effective means of promoting a dental practice, their misuse can invite exposure to a variety of legal and operational perils, as demonstrated by the following scenarios:

- *While on his dental practice's Facebook page, a dentist accepted a patient's online "friend" request and began communicating with the patient regarding her current course of care. The patient relied on the dentist's advice in lieu of seeking onsite care, eventually suffering serious complications from an apparent delay in treatment. Subsequently, a lawsuit was filed against the dental practice, asserting unethical conduct on the part of the dentist, among other allegations.*

<sup>1</sup> The survey report is available to ADA members at <http://www.ada.org/1441.aspx>. To access it, scroll down to "2010 Technology and Social Media Survey (January 2012)."

- Under an adopted “username,” a dentist blogged about why he preferred not to treat patients who carried a certain type of dental insurance. Soon afterward, a patient with the specified insurance coverage sued the dentist, alleging a missed diagnosis and negligence. The plaintiff’s attorney was able to obtain and produce copies of the blog postings, making the case more difficult to defend.
- A dentist specializing in cosmetic procedures “tweeted” that she achieves “outstanding results” without substantiating data to support the remarks. Some of her patients, who were dissatisfied with their treatment outcomes, complained to the state board of dental examiners. The board sanctioned the dentist for false and exaggerated representations under federal and state truth-in-advertising laws.
- assessing platforms, applications and/or vendors regarding capabilities, consumer familiarity, costs, convenience and security considerations<sup>2</sup>
- reviewing insurance policies for potential coverage gaps and recommending portfolio changes, where necessary

Once the site goes online, the social media consultant also can help educate staff, patients and other users on rules and etiquette; advise on updating guidelines; assist legal counsel in reviewing and updating vendor contracts and site controls; and ensure that all social media tools have a consistent identity and appearance, including appropriate use and placement of the practice logo.

## SOCIAL MEDIA SAFEGUARDS

The following measures can help improve compliance with social media use expectations and limit liability exposure:

**Draft formal policies and procedures.** Written guidelines should be designed to protect patient privacy, prohibit misleading and harassing statements, and specify the individuals authorized to speak on behalf of the practice. Guidelines also should mandate review by legal counsel of internal protocols, vendor operating policies, and contract provisions regarding privacy obligations and security controls.

**Incorporate social media issues into staff training.** Sessions should cover such key concerns as social networking protocol and expectations, parameters for use during working and non-working hours, potential legal pitfalls, patient confidentiality issues and disciplinary consequences of misuse. Offer training to all new employees upon hire and annually thereafter, documenting session content and attendance.

**Establish standard terms of use.** Inform users that they are subject to the site’s terms and conditions and that repeat violations will result in termination of access. The “click agreement” with users should be written in clear and unambiguous language and include these basic provisions, among others:

- Users understand the risks associated with participating in online communication and acknowledge that postings by dentists and staff are not intended to be interpreted as a dental diagnosis or treatment.
- Service marks and trademarks of the practice are the sole property of the organization, and no copyrighted text, image, video or audio content may be distributed, modified, reproduced or used, in whole or in part, without prior consent of the practice.

<sup>2</sup> Major security assessment sites include the National Vulnerability Database at <http://nvd.nist.gov/> and the Open Source Vulnerability Database at <http://www.osvdb.org/>. To identify vendors that have experienced a privacy breach, visit the Open Security Foundation’s DataLossDB at <http://datalossdb.org/>.

These exposures could have been avoided had proper social media safeguards been in place. This edition of *Dental Expressions*<sup>®</sup> offers practical strategies for maximizing the advantages of social media while mitigating associated risks.

## PREPARATORY MEASURES

Before initiating a social media project, dentists should fully consider its implications from a strategic, marketing, liability and information security perspective. The following questions can help focus the planning process:

- What is the underlying purpose of the social media activity?
- Does the proposed social media presence complement the business strategy of the dental practice?
- Who is the intended audience for the site, page or profile?
- Which topics, activities and forms of interaction will be promoted, and which will be excluded?
- Are adequate human and financial resources available to maintain and update the project on an ongoing basis?
- Which media platform, tool or application is best suited to the intended purpose and audience?

Dentists may wish to retain a social media specialist to answer these initial questions, as well as to assist in the planning and implementation of the following essential activities:

- establishing practical boundaries and guidelines for electronic media use
- promulgating sound operating rules and security controls to protect against infiltration and other external threats
- negotiating with vendor platforms regarding terms of use, such as requirements for separate login pages and written notice of changes in privacy conditions and provisions

- *Blog postings may be edited or deleted by the practice without prior notice, and abusive, illegal, disruptive or medically misleading communications are subject to immediate removal.*
- *Disclosure of patient health information shall be governed by patient privacy policies, as well as relevant federal and state privacy laws. Solicitation of confidential or proprietary patient information is strictly prohibited.*
- *The practice is indemnified against any damages, liabilities, judgments or expenses arising from any third party claim involving posted material.*

**Prepare disclaimer statements.** Sites should include the following standard disclaimers:

- *All content and information are of an unofficial nature and are not intended to be interpreted as dental advice.*
- *The views expressed are those of users and do not necessarily represent those of the practice.*
- *The sponsoring practice is not obligated to monitor chat rooms, Facebook pages, bulletin boards or other interactive areas where visitors post their comments.*

**Institute strict editorial controls.** Written guidelines for user-posted comments should include the following restrictions:

- *Postings cannot contain specific patient data or other confidential information.*
- *No unlawful material can be posted on the site, nor any content that could be considered obscene, defamatory, threatening, harassing or malicious.*
- *No material can infringe on the rights of any third party, including rights to intellectual property, privacy or branding.*
- *Superlative and absolute phrases are to be avoided, such as "best care," "highest quality" or "state of the art," as they may be used in a legal action alleging breach of an express or implied warranty.*
- *Messages may not entice prospective patients to expect care beyond the practice's capabilities, nor rely on falsely promised accommodations.*
- *Any off-topic material may be deleted, including the promotion of outside products, services, groups or organizations.*
- *The practice reserves the right to remove posts advertising commercial products, including business solicitations, chain letters or pyramid schemes. Platform settings should disable advertisements and "pop-ups" when possible.*
- *Users may not impersonate another person or share their identity and password.*

**Develop an incident response plan.** The written response plan should address violations of site rules, such as password compromise, hacking, or posting of unauthorized patient images or other inappropriate content. At a minimum, the plan should encompass removal of objectionable material, notification of offenders, documentation and reporting of incidents, and staff follow-up action and disciplinary standards, drafted in compliance with relevant employment laws.

## RESOURCES

- Limoli, P. "Impact of Social Media on Dental Practices." *Dentistry Today*, posted January 1, 2012. Available at <http://www.dentistrytoday.com/viewpoint/7719-impact-of-social-media-on-dental-practices>.
- "Social Media Checklist." *Sidekick Magazine* (online, not dated). Available at [http://sidekickmag.com/continuing\\_education/social-media-checklist/](http://sidekickmag.com/continuing_education/social-media-checklist/).
- U.S. Department of Health & Human Services Center for New Media, "HHS New Media Standards and Policies Checklist," available at [http://newmedia.hhs.gov/resources/standards\\_and\\_policies\\_checklist.pdf](http://newmedia.hhs.gov/resources/standards_and_policies_checklist.pdf), and "Social Media 101 Overview: The WHAT and the WHY," available at <http://newmedia.hhs.gov/resources/socialmedia101overview06-29-09.pdf>.



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### Dental Risk Management Seminars

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| April 26, 2013 Phoenix, AZ    | Aug. 8, 2013 Lincoln, NE          |
| April 27, 2013 Scottsdale, AZ | Aug. 9, 2013 Omaha, NE            |
| April 29, 2013 Iowa City, IA  | Sept. 21, 2013 Hot Springs, VA    |
| May 3, 2013 Morgantown, WV    | Sept. 21, 2013 Ocean City, MD     |
| May 8, 2013 Uncasville, CT    | Sept. 26, 2013 Rockport, ME       |
| May 9, 2013 Bismarck, ND      | Sept. 27, 2013 Salt Lake City, UT |
| May 10, 2013 Fargo, ND        | Oct. 17, 2013 North Platte, NE    |
| May 16, 2013 Columbia, MD     |                                   |