

## Social Media HIPAA Violations Are On The Rise

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### Key Points:

- **Action taken for disclosing PHI in response to negative online reviews**
- **OCR action includes fines and mandated actions**
- **Critical to have and train employees on a HIPAA Social Media Policy**
- **Nearly everyone has a smartphone and many access social network platforms**
- **Social Media compliance tips**

Although HIPAA was enacted in 1996, many years before the advent of today's social media platforms and does not contain any explicit rules regarding its usage, the rule's privacy protections still apply. Nearly everyone has a smartphone these days, and many are accessing and using LinkedIn, Twitter, Facebook, YouTube, and other social media sites. This has created unique challenges and increases the risk for healthcare professionals to violate a patient's privacy and HIPAA through transmitting PHI, even without ever mentioning that patient's name. Sharing too much information on social media platforms can have serious adverse consequences for healthcare organizations and employees if PHI is involved, including fines, penalties, loss of jobs, lawsuits by patients, and damaged reputations. Everyone needs to know how information can be easily compromised. The most common mistakes involve (a) sharing photos of patients, medical documents, or other personal information without written consent (e.g., visible documents in photos of employees); (b) failure to fully de-identify a picture or text before posting; (c) posting "gossip" about a patient even if the name is not disclosed; and (d) believing posts are private or deleted when they are still visible to the public.

### Recent OCR Enforcement and Social Media:

OCR has reported receiving many complaints about PHI violations involving health information on social media or the internet in response to negative business reviews. A recent OCR [settlement](#) with a health care provider provides a good example of the consequences for

privacy violations via social media. The enforcement action included monetary penalties and mandated actions of a health care provider for impermissibly disclosing the PHI of a patient when the entity posted a reply to the patient's negative online review. OCR found that posting a response to a patient's negative online review that included specific information regarding the individual's diagnosis and treatment of their mental health condition violated HIPAA. The [mandated actions](#) included (1) developing, maintaining, and revising its written policies and procedures to comply with the HIPAA Privacy Rule; (2) training all members of the workforce, including owners and managers, on the organization's policies and procedures to comply with the HIPAA Privacy and Security Rules; (3) within 30 calendar days of the agreement, issue breach notices to all individuals, or their representatives, whose protected health information is disclosed on any internet platform without a valid authorization; and (4) within 30 calendar days of the agreement, submit a breach report to HHS concerning individuals whose PHI is disclosed on any internet platform without valid authorization.

### **Social Media and HIPAA Tips:**

The following are additional HIPAA compliance tips to consider when navigating social media:

1. Implement and have easily accessible clear, strict social media HIPAA compliance policies;
2. Define correct procedures for any social media posts and what is not acceptable;
3. Perform a Security Risk Analysis (SRA) that includes social media used;
4. Mandate HIPAA training at the time of hire and annually thereafter that includes social media responsibilities for employees;
5. Stress not posting or saying anything on social media that would not be said in public;
6. Stress violating HIPAA has serious consequences, including job loss and other penalties; and
7. Periodically update HIPAA policies to keep current with changes in rules and technologies.

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## About the Author

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.