

# Potential Legal Consequences of Social Media

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By Ron Hedges

Social media is ubiquitous. Almost assuredly everyone reading this blog is employed by or a member of a healthcare organization that has a social media presence. That presence can be beneficial to you and your organization. However, that presence might be harmful. Let's explore certain aspects of social media that you might wish to think about both for in terms of your organization's social media presence and your own as an individual.

## What is social media?

Let's start with a basic definition from Merriam-Webster's online dictionary: "forms of electronic communication (as Web sites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (as videos)." There's a lot covered by this definition—including this blog post and the website that hosts it. We have online communities that enable content to be shared. That sharing and content can be problematical. (For this discussion let's leave aside intentional or inadvertent disclosure of information protected by the HIPAA Privacy Rule).

## What's the Worst that Could Happen?

Social media usage enables us to communicate and interact with many people. Those communications and interactions might have legal consequences. Let's consider a few:

- Some people may not be familiar with the concepts of actual, apparent, or implied authority. What these terms mean is that an employee or representative of an organization can, assuming certain conditions are fulfilled, "bind" the organization when he or she makes statements or enters into dealing with others. The organization might find that it has entered into a contract or committed a wrongful act through the contact of an employee or representative *regardless* of whether the organization intended to do so. This means that an organization's social media presence should include appropriate disclaimers to avoid giving any employee or representative "authority" to bind the organization. It also means, of course, that the organization should control who "speaks" for it on social media and should caution those speakers as to what they say.
- Everyone is familiar with the concepts of "privacy" and "confidentiality." We want to be able to communicate with others and to be assured that whatever we communicate does not become public knowledge. Social media is NOT conducive to either concept. Why? Most everyone should be familiar with "public" as opposed to "private" social media communications. Public communications are, by their very nature, available for all to see and, accordingly, NOTHING that you or your organization considers to be private or confidential should be communicated in this manner. "Private" postings may seem to be different. You may think that because you are communicating ONLY to others selected by you (perhaps defined as "friends") you can maintain privacy or confidentiality. Don't count on it! Why? The law requires that an individual have both a subjective AND objective expectation of privacy in a communication. In other words, you have to believe you are entitled to privacy. However, "society" has to have that belief as well to protect your communications. Suffice it to say that if you communicate something "private" or "confidential" to several hundred "friends," then the law is unlikely to accept that you have any objective expectation of either.
- Who owns social media content is another question that might be posed. For example, assume that you are an employee of an organization and are communicating through a social media site such as LinkedIn. Or assume that you are communicating on your organization's social media. Then assume that, under either example, whatever you are doing has some value. What comes to mind might be a customer list. Who owns what you have done? You, who might want to take that hypothetical list to a new employer, or the organization, who employed you at the time the list was created? This is another area in which some terms and conditions of employee use of social media might be beneficial.

## Raising Awareness for Social Media Users

Those who use social media, either as individuals or as representatives of organization, need to be aware of the potential ramifications of even the smallest action. Bear in mind that there are a number of other issues that can arise from social media use. Social media use can lead to both good and bad consequences. It's best to consult with counsel about what those can be and how to avoid the latter.

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