



The Unsociable Network

■ JOHN SHUFELDT, MD, JD, MBA, FACEP

work with a non-physician professional in the emergency department. She is very intelligent, practical, and always helpful. There is only one small issue: many of her posts on her Facebook page are overtly anti-patient. She frequently rants about the stupid patients, how “bad” the clientele we treat act and how, ultimately, they get what they deserve.

Despite her obvious intelligence, she has not realized that what she posts is discoverable and possibly admissible in court.

I know of a number of providers who advocate the use of medical marijuana, and post frequently about their own marijuana use as well as the medical benefits of marijuana.

I know of at least one case where a defensible case was settled after the plaintiff’s attorney uncovered online posting of the defendant physician which, if made public, would have shined a very poor light on the physician and hospital.

I know what you are thinking. “My site is blocked to everyone except my closest friends; no one else can see what I post.” As Jerry Seinfeld once replied to Kramer, “Holy Moses, smell the roses!” I have had a number of computer savants tell me that they can “get into anyone’s Facebook page they want, no matter how well it is blocked.”

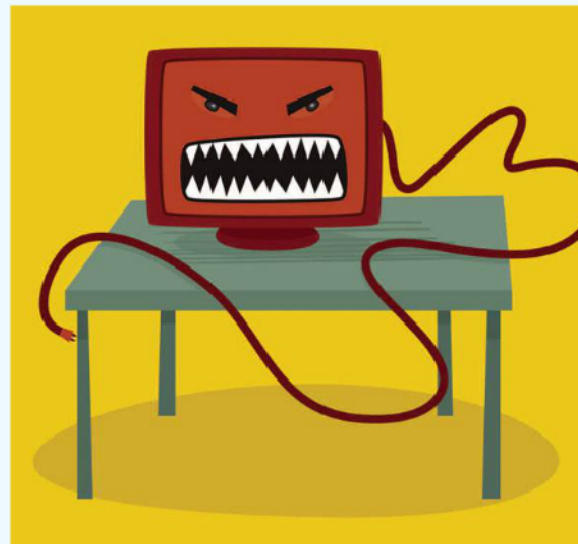
The point is this: What you may think is viewable only to your friends may in fact be easily discoverable and, once discovered, may be used as evidence against you in a medical malpractice trial or medical board disciplinary action.

Here are a couple of ways this could play out:

- You see a patient with low back pain. You take a thorough history, perform a complete exam, and document and discuss with the patient that you believe his pain is secondary to muscle spasm. The patient returns three days later and is ultimately diagnosed with an epidural abscess. The patient has a poor outcome and files suit against you, the urgent care center, and the joint venture partner hospital.



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Everything looks great for the defendants, though; the chart is well documented, the exam thorough, and the discharge instructions clear and time sensitive.

There is only one small fly in the Bengay: the opposing attorney found a “tweet” you posted complaining about drug-seeking patients with low back pain. Now, all bets are off. The opposition is going to blow up the “tweet” and project it in front of the jurors and attempt to argue that you have a bias (based upon your tweet) against patients with low back pain.

You eventually settle what would have been a very defensible case before trial.

- You are at a drug company-sponsored event with your group where there is an open bar. You rarely drink alcohol, and are not the one pouring the drinks so you wisely choose to have only a few vodka cranberries.

On the way home, you are stopped for not using your blinker before making a turn. The officer questions you about alcohol consumption; you respond honestly that you only had three drinks. Unfortunately, you fail the HGN (horizontal gaze nystagmus) test and the breath-