

Social Media: Legal Ramifications

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Disclosures

None.

I have no financial relationships with any social media platforms mentioned in my presentation.



Cyberstalking



- First anti-stalking statute: California, 1990
 - “Course of conduct”
 - Victim (or family or a household resident) must “reasonably fear for their safety”
 - No need to show stalker’s intent (“you’ll get what’s coming to you”)
- Literature on social media cyberstalking of psychiatrists - none
- Extrapolate from two bodies of literature:
 - Cyberstalking
 - Stalking of Physicians
- Cyberstalking: It’s just regular stalking behavior, with computers, right?



Cyberstalking

- Cyberstalking Definition (for Research Purposes):
 - The use of the internet (or other electronic means) to stalk or harass (OED)
 - The repeated, unwanted pursuit of a relationship through computers and/or the internet (Goodno, 2007)
- Prevalence:
 - 6% (Dressing, 2011)
 - 14% (Abrams & Robinson, 2012)
 - 20-40% (Baum, Catalano & al., 2009)



Cyberstalking

- Women were more likely to have admitted to cyberstalking than men (Strawhun, Adams et al., 2013)
- It is more likely for
 - a woman to stalk another woman than for
 - a man to stalk another man (West & Friedman, 2008)
- Male stalkers try to maintain a lost romantic relationship
- Female stalkers try to establish one (Meloy, 2013)



Stalking of Physicians

- Differences
 - Male MDs are stalked at equal rates as female MDs (Butler & Duenk, 2013)
 - A psychiatrist is more likely to be stalked by a female (West & Friedman, 2008)
 - Certain specialties are stalked more often:
 - #1 Psychiatry (**25%**, Nwachukwu et al., 2012; **21%**, McIvor et al., 2008)
 - Ob/Gyn
 - Family Practice (**10%**, Butler & Duenk, 2013)



Stalking of Physicians



- Risk factors particular to physicians
 - Physicians (particularly psychiatrists) try to be kind to our patients
 - Yelp, HealthGrades, Press Ganey, etc. make physicians err on the side of politeness
 - HIPAA generally prevents most Yelp replies to anonymous criticism
 - Board complaints intended solely to harass
 - 16% of residents have posted unprofessional content on social media (Ponce et al., 2013)
 - Replying to patient concerns/emails late at night
- Female Stalkers
 - 50% have a personality disorder
 - 30% have a delusional disorder
 - Female stalkers are more likely to call; less likely to follow (Purcell et al., 2001)



Cyberstalking Social Media Defense Tactics

- Most effective:
 - 1. Unfriending, blocking, increasing privacy settings, changing accounts
 - 2. Ignore
 - Least effective:
 - 1. Playing along (e.g. continuing to communicate with anonymous stalker)
 - 2. “Letting them down easy” with an excuse (e.g. “love to, but I have a bf”)
 - 3. Insults (e.g. “You’re pathetic, a coward and a loser! Leave me alone!”)
- (Tokunaga & Aune, 2017)



Restraining Order Options

- Restraining Orders are most helpful in the following two situations:
 - 1. Cases where the stalker is likely to be dissuaded
 - 2. Cases where the stalker is least likely to be dissuaded, and is highly likely to be violent/aggressive (e.g. a former boyfriend with a temper).
 - Prison time is 2-4 times greater
- Some threat assessment professionals debate whether in certain stalking cases, the restraining order *may* be more likely to provoke violence than prevent it (ATAP Annual Meeting, 2017)



Cyberstalking Categories

• Tokens of affection	94%
• Exaggerated messages of affection	73%
• Messages sharing excessive info of stalker	65%
• Needy/demanding messages	63%
• Assuming a false identity	41%
• Obscene images	33%
• Exposing victim's private info/sabotaging reputation	28%
• <u>Sending threatening pictures/images</u>	10%

(Tokunaga & Aune, 2017)



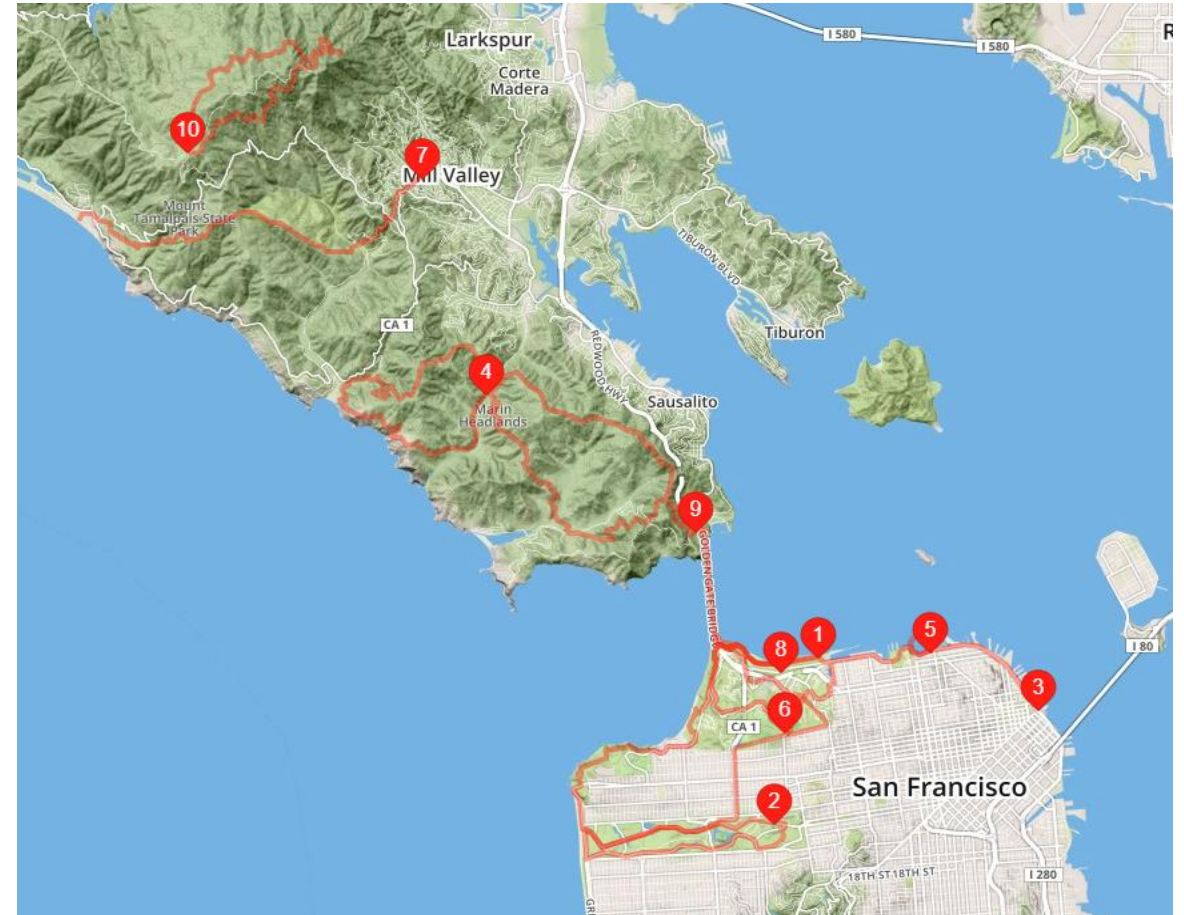
Specific Social Media Site Pitfalls

- Strava



- LinkedIn/Facebook

- WeChat/WhatsApp/Line



HIPAA: Social Media Pitfalls

- Assuming a physician inadvertently breaches HIPAA on social media:
 - HIPAA only applies to “covered entities.” A physician in private practice who doesn’t take insurance might avoid being classified as a HIPAA “covered entity.”
 - Prior authorization requests?
 - HIPAA is enforced by the federal government, not by patients. Specifically, the Dept of Health and Human Services’ Office of Civil Rights.
 - Civil suit for falling below the community “standard of care”
 - Connecticut, West Virginia: HIPAA IS the “standard of care”
 - Damages? (e.g. Diagnosis sent to wrong email address)



HIPAA: Social Media Pitfalls

- Nevertheless, “wronged” patients can still burn you
 - CA’s version of HIPAA, the CMIA, likely still governs
 - Yelp/Google My Business/Press Ganey
 - Physician may not be able to reply



Grumpy Yelp Reviews

- Yosemite: 1 star. Trees block views and too many gray rocks!
- Grand Canyon: 1 star. More like “mediocre canyon.”
- Yellowstone: 1 star. Like a bigger version of Central Park, only with bears.



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