Trying Birth Injury Cases Online: Social Media’s Impact on Litigation

Objectives:
Understand how social media may be used in litigation.
Objectives:
Learn best practices for establishing appropriate boundaries in social media.

Objectives:
Recognize the adverse consequences of social media in medical care.

How Did We Get Here?

- My perspective is from that of a avid proponent of healthcare and technology.
- And also from that of a healthcare lawyer.
How Did We Get Here?

- My goal is to recognize the potential of technology to improve healthcare, and...
- Help you realize how technology can hurt us.

Chart Integrity

- The medical chart is where you document patient care. It is the hub of information.
What happens when information is documented outside of the medical chart?

Chart Integrity

Stefanie is young patient at ACH. She has had difficulty walking and a large ulcer on her left foot. She recently developed bilateral leg weakness in addition, however, this is only communicated from one physician to another by private email and not documented in the chart.

Continuity of Care

Neurology is not consulted in a timely manner and a spinal abscess goes undiagnosed. Stefanie is now eight years old and a paraplegic.
Sarah is 21 weeks pregnant and calls in to AMG to report leg swelling. When a nurse returns her call, Sarah also reports a severe headache for one week. This new complaint is communicated via text to her primary obstetrician, but not documented in the chart. The on-call OB never learns of the headache complaint.

DVT is considered and ruled out by Doppler. The patient is never examined and delivers emergently after suffering an eclamptic seizure. The child is blind, deaf, and is diagnosed with cerebral palsy. The mother goes into renal failure.

In both cases, some had documented what was going on – just not in the chart.
Once a lawsuit is filed, there will be a request by the patient's attorney for all records of that patient's care.

This includes all emails and texts that document any part of the patient’s hospital course.

Both the sender and the recipient will have their messages scrutinized by risk management, hospital defense counsel, and the plaintiff’s attorney.
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All messages.

The sender and recipient of every email containing patient information may be called to give a deposition.

Depositions can last 3 hours or longer and are mentally exhausting.
Electronic Evidence

- Some information regarding patient care is protected by privilege – it cannot be used as evidence in litigation...

- Unless...the privilege is destroyed because the information is shared with someone outside of the privileged process.
Electronic Evidence

Emails are a casual form of communication :)

- The content of emails can be EASILY TAKEN OUT OF CONTEXT BY ATTORNEYS and a jury.

Electronic Evidence

- Emails will be admitted as documentation.
- They will carry the same weight and be looked at by a jury with the same scrutiny as the patient's medical chart.
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What About PerfectServe?
Electronic Evidence

- It can be impossible to defend good medical care if the thinking behind the care is not documented in the patient’s chart.

Electronic Evidence

- It is impossible to defend medical care when crucial information that would have changed the course of a patient’s care is missed because it is not recorded in the chart.
Why we should win:
- We are skilled, trained professionals
- We have reports and documentation
- We have a logical, justifiable explanation
- Our witnesses have testified under oath
- We are good people that are here to help
There is no such thing as internet privacy.
As much as I don't agree with North Korea, I'm very glad someone put this immature hot man baby in his place. I mean, since the rest of the world loves giving free passes to misbehaving white boys.

Hey [Name], Medical Center this is an employee of yours???? And worse—a NURSE who is supposed to have compassion and empathy for ill/hurt people???? This is far worse than disgusting and sickening... if I were you, I'd be ashamed that she works for your hospital.

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Every white woman raises a detriment to society when they raise a son. Someone with the HIGHEST propensity to be a terrorist, rapist, racist, killer, and domestic violence all star. Historically every son you had should be sacrificed to the wolves.
“Hi Sarah, do you still remember me? I’m so happy to find you on Facebook. It’s been three years since you left Chicago, and we miss you down here. I’m glad to reconnect with you and I’m hoping you will keep in touch.”
Do you accept a friend request?
Should you comment on a patient’s social media or blog?
What if a patient texts you?
What about photos/videotaping?

What about personal use?
What about when I’m off the clock?
Does it matter what I post?
Social media allows me to vent.
What about off the clock?

73% of State Boards would investigate a clinician for posts depicting intoxication.

Zimlich, Rachael RN, State medical boards offer advice on avoiding investigations over social media use. Medical Economics 2013, Jan.

What about off the clock? What about off the clock?
Social media allows me to vent my frustrations.
Started yesterday with an abortion followed by a fetal demise. Just ended with two big juicy boys! Now off to get girls to camp and then to clinic. Missed that run again. Oh well. Mojitos waiting for me — at Advocate South Suburban Hospital.

Alarm goes off at 4 am for my 7 miles. 4:15 cesarean section called. Ready? Placentaabruption flakemanworthy #Ooohyegigtiesisnothing — at Advocate Trinity Hospital.
Social media influences...
Patient perception
Litigation psychology
Juror beliefs
Social media can destroy...

- Competency
- Credibility
- Career
Case study:

- 7 years of litigation
- Over 50 depositions
- $75M demand
Case study:
Dismissed the nurses and residents
$11 million settlement

Thank you.