



PROTECTING REPUTATIONS IN THE AGE OF SOCIAL MEDIA

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The good.....



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the bad.....



<http://www.ranker.com/list/the-13-worst-doctors-of-all-time/greg>

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the bad.....



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and the secret



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The Positives

- The positives
 - You can monitor your brand
 - You can disseminate information quickly
 - You can distribute inspirational stories
 - You can use it as a educational or promotional platform
 - You can use it to create an alumni of happy families/patients/staff (user communities)



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The General Risk

- Violation of your legal, professional, social or ethical obligations via social media is no different to violation of those obligations in any other way
- You must monitor and control social media in the same way you monitor and control all other conduct



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Special Rules for Doctors

- Social media advertising is subject to health practitioner registration laws and Codes of Conduct
- This applies to:
 - Testimonials
 - Comparisons with other doctors
 - Promotion of specialty
 - Testimonials, even if you didn't ask for them
 - Promotion of your expertise outside your geographic area of registration



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Special Rules for Doctors

- Social media advertising is subject to the laws and Codes of Conduct relating to the promotion of therapeutic goods to consumers and health professionals including the Therapeutic Goods Advertising Code
- This applies to:
 - Prohibition on advertising certain drugs to consumers
 - Testimonials about drugs or treatments
 - Prohibited representations
 - Advertising without approval
 - Inappropriate benefits



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The Legal Transition

- At present, the law is addressing the use and misuse of social media by applying existing rules to the new environment
- The law has adapted its rules to new technology from signs on walls, to the photocopier and fax, to email, to the internet, to portable storage devices and now social media



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Legal Issues

- Harassment/Bullying and discrimination
- Confidentiality/privacy
- Employment/dismissal/pre-employment check
- Misleading and deceptive conduct
- Copyright/trademark infringement
- Creating binding contracts
- Defamation
- Evidence
- Criminal conduct
- Funding Agreement restrictions



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Examples of Recent Activity

- Defamation:
 - “Clearly [name] doesn’t know what she is doing”
 - Being cc’ed on an inappropriate email was enough for defamation action to commence
 - Racial/Professional slur in a blog
- Copyright infringement
 - Using a photo of someone else’s product



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Examples of Recent Activity

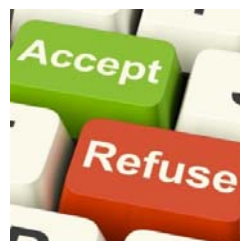
- Misleading and Deceptive Conduct
 - Astro-turfing
 - Reliance on an out of date website
- Employment
 - Excessive time spent at work on social media
 - Employment duties of good faith and fidelity
 - Obligation to obey lawful and reasonable directions
 - After hours use
 - Pre-employment checks



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Examples of Recent Activity

- Contracts
 - Click wrap agreements
 - Browse wrap agreements
 - Exchange of emails
- Use in legal cases
 - Service of documents
 - Is generally admissible evidence



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What to do to address the risk?

- Assess the value of Social Media to your business and the market
- Do a formal risk analysis for
 - Staff use
 - Third Party contributors and users
- Determine what strategy to adopt



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If You Host a Blog

- Where you host or manage a website or blog
 - Have click wrap terms and conditions of use
 - Set up monitoring arrangements for blogs and tweets (NB there are automated response programs to assist)
 - Do regular updates to ensure information is current
 - Draft policies and procedures for your staff
 - Do daily blog review, and give immediate attention to complaints



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Use of Social Media by Staff

- Consider and Communicate:
 - What online presence is acceptable
 - Email use protocols – should private emails on work related matters be accessible to the employer?
 - What sites (or types of sites) will be blocked
 - Train and educate
 - Confirm that you will take into account *all* social media interaction
 - The consequences of misuse



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Things You Must Have In Place

- Ensure you have a written:
 - Online/Social media strategy (purposeful and directed)
 - Usage and compliance guidelines for internal users
 - Terms and conditions for website, blogs and external users (including disclaimers)
 - Strong and enforceable privacy rules and processes



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Questions?



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Protecting reputations in the age of social media

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