



MEDICAL MALPRACTICE CLAIMS VERSION 2.0: PROPUBLICA'S PATIENT HARM COMMUNITY FACEBOOK PAGE

© Erik S. Laakkonen

Attorney, Kramer deBoer Endelicato & Keane, LLP

On May 21, 2012, ProPublica, an independent, non-profit newsroom that produces investigative journalism, launched a Facebook page entitled "Patient Harm Community," intending to build an online "community of people—patients as well as doctors, nurses, regulators and health care executives and others—who are interested in discussing patient harm, its causes and solutions." The community is moderated by ProPublic reporters Olga Pierce and Marshall Allen.

As of August 9, 2012, the Patient Harm Community boasted 894 members and a review of the group's page shows that it contains several different types of postings, ranging from personal stories involving alleged negative patient outcomes, links to healthcare/medical device-related articles, links to recent or prospective healthcare legislation and advertisements for patient advocacy groups.

In a posting advertising the launch of the Patient Harm Community, ProPublic indicated that "group members have already shared stories of personal disability or death of a loved one due to surgical mistakes, becoming infected with a deadly drug-resistant bacteria and dental mishaps—including cases they claim were not properly addressed by health care providers."

The Patient Harm Community page raises privacy concerns, especially since patient-specific postings by individuals or other entities might violate privacy rules set forth in the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191). As noted above, the Patient Harm Community expressly invites a response from healthcare providers, but such providers should consider the ethical and legal considerations to be accorded any such electronic discourse and assess any potential liability under HIPAA privacy rules. Quality improvement and risk management professionals would be well-advised to develop policies discouraging any online interaction with internet groups like the Patient Harm Community in order to avoid liability.

However, the emergence of online patient forums such as the Patient Harm Community provides a potentially valuable source of information otherwise unavailable to defense counsel. Discovery in the form of written interrogatories and requests for admission might be utilized to elicit information and obtain admissions related to the plaintiff and/or family members' Patient Harm Community postings to be used as either impeachment or exculpatory evidence favoring the healthcare provider defendant, i.e., facts supporting a contributory negligence theory. In addition, subpoenaing records from Facebook, limited to the Patient Harm Community page (a public page) and the patient at issue, might be an option. Strategies can also be developed to garner deposition testimony regarding individuals' postings on the Patient Harm Community in

an effort to lay the proper foundation, or authentication if documentary evidence is available, to use this information at the time of trial.

You can check out more about the Patient Harm Community page by logging in as a member to www.facebook.com. (Our law firm has a Facebook page too.)

CAVEAT: THE FOREGOING DOES NOT CONSTITUTE LEGAL ADVICE. PLEASE CONSULT AN ATTORNEY FOR INDIVIDUAL ADVICE REGARDING INDIVIDUAL SITUATIONS.