

Focus On ... Law

CAREFUL CARE

Health care companies must be aware of legal risks that come with new technology

BY BRETT JOHNSON

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Health care organizations are sharing all that and more today through social media platforms such as Facebook. Because, just like anyone else in business, these organizations want to engage with the people using their services while at the same time promoting their brand.

And why not?

You can always count on an attorney to give you just that spoilsport answer: Any use of the latest tools of online communication is going to carry some level of risk.

Monica Vir, an attorney at Lindabury, McCormick, Estabrook & Cooper P.C., said there's always a need to be compliant and make sure the proper disclaimers are in place when engaging with the latest online tools. And, even then, there's at least the potential for complications.

"Sure, something like nutritional advice

on social media doesn't fit into the strict definition of the practice of medicine," she said. "But, still, organizations have to consider when they're offering that advice to the public whether they're informed or not that it isn't medical advice."

Vir said she hasn't had any issues come up with respect to malpractice complaints due to this yet.

"But as clients explore how they can use the technology to their advantage, it's part of the risk-benefit analysis," she added.

That same analysis has also been pertinent to physicians considering using tech platforms such as Skype or Facetime to consult with patients remotely.

The issue there, Vir said, is that medical professionals have to be mindful of whether their malpractice insurance will provide coverage when that professional is virtually practicing in a state they haven't been licensed in.

About half the country has joined the Interstate Medical Licensure Compact, which offers a way for physicians to receive licenses to practice telemedicine in participating states. New Jersey isn't yet one of the compact's member states.

"And every state has different rules about how you can

offer telemedicine services, and some might require an in-person visit first," Vir said. "So, you always have to know where your patient is."

There are other implications of using new online mediums for connecting with patients. One is

potential violations of HIPAA confidentiality rules, which Vir said might result from data breaches or the potential for someone else to be in the room when patient information is being shared remotely.

"There are a lot of benefits to something like telemedicine, including reaching patients in underserved areas," Vir said.

"But you just have to weigh that with the risks of doing it. And there might be some organizations that are reluctant to engage on those platforms once that analysis is done."

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Conversation Starter

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DIGITAL DATA DILEMMA



A day in the life of Day Pitney attorney Thomas Zalewski involves a lot of thinking about what might keep life science companies up at night.

Lately, that means taking time to stay abreast of the legal risks tied to data breaches.

"One thing a lot of life science companies are very concerned about is the threat of data breaches, as

many have followed the trend of digitizing their data," Zalewski said. "They know they need to lock it down and keep it secure, but they have to be prepared for the legal framework surrounding what happens when there is a data breach."

First off, there's a complicated network of rules across states for reporting data breaches to those whose data has been compromised after they happen, but there are also separate rules abroad,

too. For the life science sector — by default more internationally focused than most industries — navigating these laws can be a nightmare.

"So, companies in the life science sector are preparing for it in fits and starts right now," he said. "But it's only going to become more important."

Conversation Starter

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