Social Media and Healthcare
Legal Considerations

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Legal Perspective

• Organizational vs. personal use of social media
  • Your organization must consider both!
Legal and Compliance Risks

- Patient privacy violations
  - HIPAA/state privacy laws
  - Written authorization or de-identification
- Lawsuits
  - Invasion of privacy
  - Malpractice,
  - Negligence,
  - Breach of duty of care/confidentiality,
  - Defamation,
  - False advertising

Legal and Compliance Risks (continued)

- Licensing Issues
- HIPAA marketing restrictions
- Recordkeeping/security violations
- Employee privacy issues
  - NLRB
  - Privacy rights
  - Wrongful termination
Examples/Anecdotes

• Lawsuits
• Regulatory Investigations
• Licensing issues
• Other

Social Media and Marketing in Healthcare
Privacy Considerations

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Social Media and HIPAA

• While social media offers a new format and medium for sharing information, ultimately, we must look to well established and familiar principles when analyzing potential privacy issues

• All workforce members should make every effort to treat their social media communications with the same care and professionalism as if they were face to face encounters

Social Media Policy

• Entities should:

  • **Adopt** a social media policy for your organization and workforce
  • **Communicate/educate** your staff on the policy and its requirements
  • **Enforce** the policy’s requirements if/when there are violations

• **If you haven’t already done so, develop a policy now and don’t wait until after a crisis**
Effective Social Media and Marketing Policies

- Define the permissible scope of workforce members’ use of social media
- Identify authority to speak on the entity’s behalf
- Specify rules for use and as well as content that would violate compliance requirements or your entities’ policies
- Prohibit the posting of any content that contains patient details or identifying information without the patient’s written authorization. Clearly define what must be included in a valid authorization
- Establish a review process prior to posting
- Make sure your opt-out processes are clear and accessible

Reducing Risk

- In addition to implementing a social media policy, consider what other steps your entity can take to reduce risk
  - Establish clear lines of communication with stakeholders
  - Create a social media working group to discuss your entity’s social media strategy and review relevant issues/concerns. Make sure to include your legal/privacy/security representatives
  - Provide and document a thorough, role-based training program on federal and state patient privacy regulations for your marketing staff, including examples of what not to do
Reducing Risk (continued)

- Define your marketing goals and ensure your social media programs are narrowly tailored to meet those goals
- Develop a robust content review and approval process prior to posting
- Supplement monitoring efforts with technological controls
- Have staff members sign confidentiality agreements and maintain a copy of the agreement in the employee’s personnel file
- Develop metrics to measure program effectiveness

Social Media and New Vendors

- Ask whether your social media strategy is right for your industry and organization. Do the anticipated benefits justify the compliance risks?
- Ensure your legal, compliance and security representatives have a seat at the table when your organization is developing its social media plan and engaging new vendors
- Know your audience and familiarize yourself with your tools
- Take the time to conduct appropriate due diligence prior to onboarding (risk assessments, contracts, etc.)
Social Media and New Vendors

- Ask how the vendor plans using your data once it is in their environment (e.g. research, data mining, de-identification and repurposing, etc.)?

- Make sure your leadership team understands the resources necessary to ensure your marketing initiatives are appropriately staffed and have adequate oversight

- Track, measure and document

Social Media Information Security Considerations

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Agenda

- What is considered as Social Media?
- Changing Landscape of Healthcare Organizations
- Key security threats and risks
- Mitigation controls

What is considered as Social Media?
Changing Landscape of Healthcare Organizations

- Increased number of contractors, consultants and voluntary workers
- Partnership and outsourcing activities
  - Technology companies
  - Companies based in off-shore locations
  - Sub-Contractors to your business associates
- Employee and patient level communications
- Millennials expect to have access to Social Media sites at work

Changing Landscape of Healthcare Organizations (cont’d…)

- Physicians like to access, download/upload ePHI to cloud storage sites (e.g. GoogleDocs, DropBox, Box)
- Employees could be accessing these social media sites using company computers/network, company issued mobile devices, personal computers and outside corporate network
- Productivity and network bandwidth issues – corporate network
- Using same passwords for personal and corporate use
Key Security Threats and Risks

• Reconnaissance
  • Hackers harvest information from social media sites
• Confidential Data Leakage (intentional & unintentional)
• Exploiting Trust and Connectivity
  • Fraudulent websites and/or malicious attachments
• Permanence and Persistency of data
• Representation and Authenticity of data

Key Security Threats and Risks (contd…)

• Exposure of your security controls
• Disgruntled employees/contractors
• Data Ownership
• Challenges with Forensic Investigations
• Social Media as an Investigative Tool
• Lack of visibility to social media sites outside USA
Common Social Media Malware/Attacks

- Low guard when using social media sites
- Spear Phishing
- Social Engineering
- Password Attacks
- Malicious Codes/Sites
- Click Jacking
- Obfuscated Links (Shortened URLs)

Mitigation Controls

- Strategy and Governance
  - Risk Assessment
  - Policies
- People
  - Education/Awareness to all users
  - Customers/Patients
- Process
  - Alignment with business processes
  - Change controls
- Technology
  - Technical controls (prevent/monitor browsing, download and logging)
Mitigation Controls (contd…)

• Acceptable Use Policies (AUP)
• Security Awareness and Training
  • Phishing Campaigns to test employee awareness
  • Social Media privacy settings
• Sanctioning of individuals violating the policy
• Exit interviews
• Application aware proxy servers and next generation firewalls
  • Web content filtering on your network
• Employee behavior monitoring
• Social Media Monitoring Tools

Mitigation Controls (contd…)

• Leverage Healthcare Threat Feeds/Sources
  • Pro-actively block IP addresses and domain names that control Botnets
  • Accelerate detection and containment of security incidents
• Processes and mechanisms to remove negative/offensive content
• Upfront engagement of information security team
  • Partnership with Marketing, Communications and Human Resources