

Electronic Healthcare Delivery: Another Job for Compliance

Richard E. Moses, DO, JD, FCLM
Health Care Compliance Association
Philadelphia Regional Conference
Sheraton Philadelphia Downtown Hotel
Philadelphia, PA
June 2, 2017

Speaker's Disclaimer

- **Richard E. Moses, D.O., J.D.** does not have any financial conflicts to disclose.
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Presentation Goals

- Discuss the effects of major federal legislation on evolving issues related to the healthcare system and healthcare providers
- Understand the escalating use and role of social media in the healthcare industry
- Understand the current status and risks of Telemedicine and emerging healthcare technologies
- Understand the current evolution of healthcare delivery in the electronic and Internet ages and the role of compliance
- Develop strategies to minimize potential medical litigation and compliance risks when using social media in the healthcare arena

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Overview

- Background → Driving Change
- Social Media
- Telemedicine
- The Convergence
- Summary & Conclusions



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BACKGROUND

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Health Care Reform

- Health Care Reform Goals
 - Improve Access
 - Universal Coverage
 - Increase quality reporting to include outcomes
 - Increase integration of care through partnerships of physician networks and hospitals
 - Cost control and cost reduction



Former President
Obama
Signs PPACA
March 23, 2010

www.doi.gov/oboa/pdf/affor-doblicareact.pdf

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From Fee-Based to Quality-Based

- **Fee-for-service** → **Value-based/Quality-based reimbursement system**
 - Reward doctors and hospitals for improving quality of care
 - Lower demand for inpatient hospital services, greater demand for outpatient services
 - Increased number of insured patients
 - Improving patient experience key to preserving reimbursement
 - Public outcomes reports = hospital competition on outcomes and total value
 - Clinically **Integrated Networks and Population Health** Initiatives

Health Affairs October 11, 2012

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Health Care Reform II



Former President Obama Signs MACRA
April 16, 2015

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MACRA Pub.L. No. 114-10

- Medicare Access and CHIP Reauthorization Act of 2015 (MACRA)
- Bipartisan support → signed into law April 16, 2015
- Encourages adoption of Alternative Payment Models (APMs)
 - Retains Fee-for-Service Model participation
- **Telehealth**: Section 106(c)
 - Requires General Accounting Office (GAO) to draft 2 reports & submit to Congress within 2 years of MACRA's enactment

<https://www.congress.gov/bills/114/congress/house/bills/2/text>

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Quality Payment Program (QPP)

- Rulemaking enacted by CMS under MACRA
- MACRA repealed the Sustainable Growth Rate (SGR) formula
- Streamlines multiple quality reporting programs into the new
 - Physician Quality Reporting Program (PQRS)
 - Value Based Modifier (VBM)
 - Medicare Electronic Health Records (EHR) Incentive Program
- Provides incentive payments for participation in Alternative Payment Models (APMs)

<https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/MACRA-MPS-and-APMs/Quality-Payment-Program-MACRA-NPRM-Slides.pdf> 10

Health Care Reform



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SOCIAL MEDIA

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Background

- Social Media
 - Market & brand services, manage public relations, communicate during public health crisis
- “E-patients”
 - Patients who use the Internet as a health resource to learn about their own diseases, seek out treatment centers, and provide other patients with medical assistance and support
 - 42% have used social media to access consumer reviews on health topics
 - 25% have posted their views of healthcare experience
 - 20% have joined on-line healthcare “communities”

www.med.umich.edu/jrnc/socialmedia/downloads/NHA_Webinar_Slides_-_Social_Media_and_Health_Care.pdf
 http://www.healthcare.org/insight/register.asp?tag=health-care-social-media-report.pdf
 Merchant RM, et al. N Engl J Med 2013;365:289-291.

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Background

- 3,351 out of 3,371 (99.4%) of U.S. hospitals identified use of some variety of social media
- On-line communities
 - Medically-oriented site allowing patients to share stories and seek emotional support and clinical knowledge
- On-line educational sites
- Doctor-to-doctor networks
- Many others...

Moses RE, et al. Am J Gastroenterol 2014;109:1128-1132.
 www.healthcarebusiness.com/blog/hospital-marketing/health-care-hospital-use-social-media-new.html

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Background

- Sites frequently used by medical professionals
 - LinkedIn
 - Facebook
 - Twitter
 - Yelp
 - YouTube
 - MySpace
 - Flickr
 - Google Plus
 - Vimeo
 - Instagram
- Thousands of social media websites exist



www.med.umich.edu/jrnc/services/socialmedia/download/NHA_Webinar_Slides_-_Social_Media_and_Health_Care.pdf

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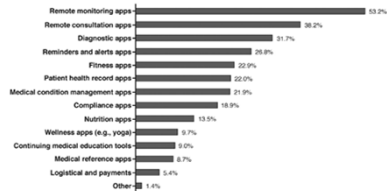
Background

- **Digital Health Movement**
 - mHealth → Mobile Health
 - Electronic health record (EHR) portals
 - Social media
 - Smartphone applications
 - Wearable biosensors
- **Goals:**
 - Monitor patients remotely
 - Improve face-to-face care
 - Drive clinical decisions
 - Offer value to health-care organizations, their patients, & their staff

Spiegel B. Am J Gastroenterol 2016;111:624-630.

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Telehealth Remote Patient Monitoring 5 Year mHealth App Growth Potential



Riaz MS, Arora A. Clin Gastroenterol Hepatol 2016;14:1697-1705.

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Laws & Regulations

- Federal legislation
- Medical malpractice
- Professional ethics
- Employment issues



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Laws & Regulations

- **Federal Legislation**
 - Health Insurance Portability & Accountability Act (HIPAA)
 - Most apparent issue regarding social media in health care
 - Protects information healthcare providers put into patient's medical records
 - Protects conversations about patient care and treatment
 - Standardized electronic processing of PHI
 - Privacy Rule
 - Security Rule
 - DHHS Office of Civil Rights enforces compliance with both rules

www.hhs.gov

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Laws & Regulations

- **Federal Legislation**
 - HIPAA violations via social media
 - **Do not disclose:**
 - Names, geographic subdivisions smaller than a state, date of birth, date of death, social security numbers, telephone numbers, e-mail addresses
 - Health Information Technology for Economic & Clinical Health Act (HITECH)
 - Created uniform standards for electronic transmission of clinical data
 - Imposes rigid violation & reporting requirements for HIPAA breaches/violations

www.hhs.gov/secret/privacy/hipaa/administrative/for-compliance/for-compliance.html

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Laws & Regulations HIPAA

- **Violations via social media → varied & rampant**
 - University Medical Center case
 - Governor Barbour of Mississippi tweets about Legislature recognizing fiscal situation
 - Employee Carter tweets Governor should schedule his routine appointments during the week when UMC is open instead of paying overtime to 15-20 staff on a weekend
 - **ISSUE:** PHI breach v. exercise of right to free speech
 - **OUTCOME:** Employee Carter resigns
 - Innovis Health case (Fargo, SD)
 - Nurses post shift change updates to co-workers on personal Facebook pages
 - Patient names not posted but enough patient specifics identifies patients
 - PHI breach

www.mtnewsonline.com/story/11713360/woman-out-of-a-job-after-sending-text-to-governor-barbour
<http://journal.ahrms.org/2010/05/06/social-media-policies>

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Laws & Regulations Medical Malpractice

- **Hearsay**
 - Out-of-court statement → excluded from evidence
- **Surgeon uses social media (Twitter) for patient education updates**
 - Plaintiff uses Tweets as “statement against interest” → hearsay comes in as evidence
 - Educational video used as evidence that surgeon did not meet the standard of care

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Laws & Regulations Professional Ethics

- **AMA & AOA Codes of Ethics**
 - Physician must place patient welfare above self interest
 - Physician should not “friend” patients & should “pause before posting”
 - Tweets, posts, & other forms of communication can veer into forbidden territory
- **On-line colleague relationships**
 - **Hypo:** physician learns from Facebook post that colleague on-call was inebriated while performing an endoscopy
 - Obligation to report impaired, incompetent, and/or unethical behavior

Farnell J, et al. Ann Intern Med 2013;358:620-627
www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opro0031

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Laws & Regulations Professional Ethics

- **Employed physicians of health care organizations**
 - Need to comply with laws and ethics rules of those organizations
 - Subject to additional levels of discipline internally
- **Most state Medical Boards have found violations of online professionalism**
 - Inappropriate contact with patients
 - Inappropriate prescribing
 - Misrepresentation of credentials
 - Misrepresentation of clinical outcomes

Bottani K, Kim J. Physician Exec 2013;39:94-96

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Laws & Regulations The Housestaff

- **Medical student & young physician perspective on social media**
 - Medical students are heavier users of social media than older physicians
 - Way of life
 - Employed by health system/teaching institution → internal rules & risks
- **Challenge: Requisite level of professionalism v. constitutional rights**
 - 2009: 60% U.S. medical schools reported medical students posting inappropriate unprofessional content online

www.ama-assn.org/ama/pub/physician-resources/medical-ethics-and-medical-ethics/option10015.page
Bottner & Kim J. JGIM 2013;September;October 96-98

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Laws & Regulations The Housestaff

- **Survey of 78 Medical Program Directors**
 - 60% reported unprofessional social media posts by trainees
 - 43% related to confidentiality
- **University of Florida cross-sectional study of medical student & resident Facebook pages**
 - 12 instances of potential breaches of privacy
 - NB: All occurred during medical missions

Christen KC, et al. JAMA. 2009;302:1309-1315.
Thompson CA et al. J Med Internet Res. 2011;13:e4.

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Laws & Regulations The Housestaff

- **Issues:**
 - What is appropriate Internet search re: patient/case?
 - What if an “unprofessional” picture or comment posted by a friend without the student’s permission is later discovered by the Dean of Students?
 - What is an appropriate blog and in what venue?
 - What is an appropriate statement or topic?
 - What is an appropriate online venue and what are the boundaries?

www.ama-assn.org/ama/pub/physician-resources/medical-ethics-and-medical-ethics/option10015.page

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Laws & Regulations Attending Physicians: The Real Deal

- **SEXTING during surgery**
- Arthur Zilberstein, MD
 - Swedish Medical Center (Seattle, WA)
- **Allegations:**
 - During surgeries ☞ sent explicit "selfies," texted sexual messages, arranged meetings on hospital property during work hours for sex, ...
 - C-sections, pediatric appendectomies, epidurals, cardiac procedures, tubal ligations
 - License suspended indefinitely (March 2015)

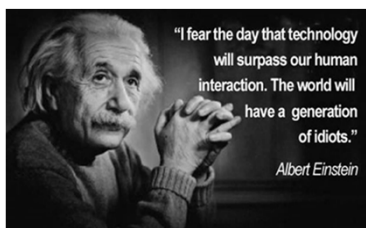
www.dailymail.co.uk/news/article-2377722/Anesthesiologist-s-license-suspended-indefinitely-sexed-surgery-see-patients-work-in-responsibly-prescribed-oxycodone.html 28

Social Media Behavior/Misbehavior Unrealized Risk Areas: Volunteering

- Medical Missions ☞ Doctors without Borders & others
- Philanthropic Volunteering ☞ National & international catastrophes
- Risky postings → photos & comments involving:
 - Identification of individuals being treated
 - Identification of same individuals in social situations
 - Alcohol with/without intoxication
 - Laughing, grinning, partying, nudity
 - Guns
 - Political statements
 - Recall 2010 Haiti earthquake
 - Et cetera

GreppenS et al. J Gen Intern Med 2010;25:1327-1329. 29

Albert Einstein on Technology




Unsubstantiated 30

TELEHEALTH TELEMEDICINE

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Tales from the Crypt

- **March 1998:** FDA approves Viagra® to treat erectile dysfunction
- Requirement for prescription ☞ physician evaluation
- Need Internet prescription from “licensed” physician
- **July 26, 2007:** Pennsylvania Internist “agreed to the permanent, voluntary surrender of his license because he failed to carry out the minimal standards for prescribing...which included a physical examination of the patient.”




www.dos.pa.gov/ProfessionalLicensing/Verify/Professional/DisciplinaryAction/Documents/200707-07_health_licensing_board.pdf

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Telehealth: Evolution

- Teleradiology
- TeleICU
- Teleneurology
- Teledermatology
- Telepathology
- Telemental Health
- “TeleFUTURE”



www.americantelemed.org/resources/telemedicine-practice-guidelines/telemedicine-practice-guidelines#V8BTSdFPU

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Telehealth v. Telemedicine

- **Telehealth** → overall access to health information rather than provision of direct patient care
- **Telemedicine** → subset within Telehealth attributed specifically to patient care
- Definitions vary by state & organization

Field MJ, ed. Telemedicine: A Guide to Assessing Telecommunications in Health Care. Washington, DC: National Academies Press; 1996.

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Telehealth Sites

- **Distant site** → site(s) at which physician or other licensed practitioner delivering service is located
- **Originating site** → location of patient at time service is being furnished occurs via telecommunications system
- **Originating sites authorized by law:**
 - Physician offices, critical access hospitals, rural health clinics, federally qualified health centers, hospital-based renal dialysis centers, skilled nursing facilities, community health centers

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Telehealth

- **Centers for Medicare & Medicaid Services (CMS)**
 - Use of telecommunications and information to provide access to health assessment, diagnosis, intervention, consultation, supervision, and information across distance
- **Applications:**
 - Telephones, Fax machines, E-mail systems, Remote patient monitoring devices that collect & transmit data

<https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/telehealthforcms1.pdf>

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Telemedicine

- **American Telemedicine Association**
- **“Use of medical information from one site to another via electronic communications to improve a patient’s clinical health status”**
- **Telemedicine applications are increasing:**
 - Two-way video
 - E-mail
 - Smart phones
 - Wireless tools
 - Other forms of telecommunication technology



www.americantelemed.org/about-telemedicine/what-is-telemedicine#V8MGTuPIU

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Federation of State Medical Boards

- **Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine**
 - Adopted April 2014
 - Guidance for State Medical Boards to create laws governing provision of care via Telemedicine



www.fsmb.org

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Interstate Licensure Compact

- Passed April 2017
- Agreement between 18 participating states & their MD/DO licensing boards
 - Compact legislation subsequently introduced in additional states
- Easier for physicians to obtain medical license in multiple states
- Interstate Medical Licensure Commission → accepts applications

www.medicape.com/viewarticle/978424_print

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Interstate Licensure Compact

- Eligible physicians expected to benefit
 - Practicing in rural areas
 - Practicing in underserved communities
 - Locum tenens
 - Metropolitan areas that include more than one state
 - Providing Telemedicine services to patients in other states

www.medicape.com/viewarticle/38424_print

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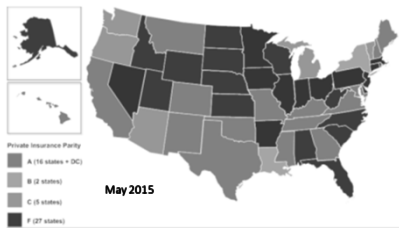
Telehealth & Government

- PPACA & MACRA → support Telehealth
- CMS
 - Established list of reimbursable services → expanding
 - Currently limits originating site locations → expanding
- State Telemedicine Parity Laws
 - Require private insurers to cover Telemedicine services
 - Laws have doubled over past 5 years

www.doh.gov/61a/9a/pdf/FloridaLicensureAct.pdf
<https://www.cms.gov/Outreach-and-Education/Medicaid-Access-Programs/Downloads/TelehealthFactSheet.pdf>
www.americanbartelemed.org/files/default-source/policy/20-state-telemedicine-qaqs-analysis-physician-practice-standards-coverage.pdf?sr=14

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Parity Laws: Private Insurance Telemedicine Coverage



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Telemedicine Potential Risks

- Informed consent
- Documentation
- Credentialing & privileging
- Standards of care
- Continuity of care
- Medication prescribing
- Fraud & abuse
- Reimbursement
- Privacy
- Medical license jurisdiction
- Laws vary among states → State Medical Boards determine privileges and parameters

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Telemedicine Potential Risks


- **Mobile Medical Apps (MMAs)**
 - Potentially create more than product liability issues
 - Increasingly used by patients & providers
 - Examples:
 - Monitoring & controlling → insulin pump delivery
 - Stethoscope function
 - Patient analysis → radiation dose, BMI, vital signs
 - Reference apps → drug interaction, drug allergy
 - Communication → access health records & other data
- **Wearable Biosensors**
- **Smartphone applications**



Spiegel B. Am J Gastroenterol 2005;111:624-630.

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Telemedicine Potential Risks Personal Health Technology

- **Fitbit users unknowingly published physical & sexual activities online**  searchable via standard search engines
- **Open Effect Report**
 - Canadian not-for-profit applied research organization focusing on digital privacy and security
 - 7 of 8 tracking devices failed to maintain security of user's information
 - Apple Watch was only device that did not fail
 - Same devices shared user's location with commercial Bluetooth "beacons" in the proximity

www.forbes.com/sites/kathleenhall/2015/07/05/fitbit-moves-quickly-often-users-are-still-exposed/91403486797
http://openeffect.ca/report/Every_Step_You_Take.pdf

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Telemedicine Potential Risks

- **Technology quality**
 - Interference with accuracy of diagnosis
 - Interference with accuracy of treatment
- **Guidelines in Telehealth**
 - Already exist → more currently under development
 - NB: Standard of care issue
- **Quality measurement?**
- **Certification requirements?**
- **Training requirements?**

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THE CONVERGENCE

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Telehealth & Future Evolution

- **Telehealth → Digital Health**
- **Digital Health**
 - Integrating digital technologies into a harmonized health delivery model to improve process and outcomes of health care
- **Digitalist**
 - Does not yet exist ☹ is this the new Hospitalist?
 - Remotely track data from biosensors, apps, portals, and social media & then combine the data with clinical parameters and knowledge about patient's medical history

Springer B. Ann L. Gastroenterol 2016;111:624-630

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Telehealth → Digital Health The Convergence

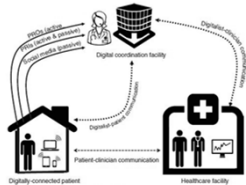


Figure 8. Model of digitally enhanced health-care delivery. In addition to traditional patient-physician communication and coordination, digital health offers new opportunities for remote monitoring of data, including patient-reported outcomes (PROs) actively reported through apps and portals, patient-reported information (PI) actively and passively collected by wearable devices and transmitted via wireless networks, and passive monitoring of social media data. The "Digital" residing in a coordination facility monitors the data streams and directly communicates with patients via portals, telephone, or other communication, and then coordinates directly with clinicians as needed to manage patients.

Springell B. Am J Gastroenterol 2016;111:424-430.

Digital Health Programs

- University of Pittsburgh Medical Center
- University of Maryland, Baltimore
- UCLA Medical Center
- Mt. Sinai, New York
- University of New Mexico
- Mayo Clinic
 - Plans to provide healthcare input to 200 million patients worldwide by 2020????
- Others...

Cross NK, Kane S. Clin Gastroenterol Hepatol 2017;15:175-181.

SUMMARY & CONCLUSIONS



Richard E. Moses, D.O., J.D.

- Practicing Gastroenterologist for over 30 years
- Board Certified:
 - **Gastroenterology**
 - **Internal Medicine**
 - **Forensic Medicine**
- Chair, Department of Medicine, Jeanes Hospital, Temple University Health System
- Adjunct Clinical Professor of Medicine, Temple University School of Medicine
- Adjunct Professor of Law, Temple University Beasley School of Law
- National Speaker, Author, Educator, and Consultant on Medical, Risk and Compliance education
- remoses@mosesmedlaw.com
- www.medlawcompliance.com



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Health Care
Compliance
Association

Thank You

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Philadelphia Regional Annual Conference
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