



MEDICINE AND THE LAW

Ethical and legal perspectives on use of social media by health professionals in South Africa

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Use of social media has increased exponentially throughout the world. Social media provides a platform for building social and professional relationships that can be used by all, including healthcare professionals. Alongside the benefits of creating networks and spreading information wider and faster than is possible with traditional communication channels, however, it presents ethical and legal challenges. For health professionals, it poses a threat to confidentiality and privacy owed to patients, colleagues and employers. It is vital for health professionals to acknowledge that the same ethical and legal standards apply both online and offline, and that they are accountable to professional bodies and the law for their online activities. This article seeks to explore the ethical and legal pitfalls facing health professionals using social media platforms. Importantly, it seeks to create awareness about the cyberpsychology phenomenon called the 'online disinhibition effect', responsible for lowering restraint during online activities.

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Social media refers to forms of electronic communication that enable individuals and communities to gather, communicate, share personal messages, share various types of information, and in some cases collaborate or play.^[1,2] Examples of social media include Twitter, Facebook, YouTube, LinkedIn and blogs, among others.^[2] Social media litigation is still new in South Africa (SA), and the 2013 *Isparta v Richter* case^[3] is the first case in SA where damages were awarded to the plaintiff for defamatory statements made on Facebook. Traditionally, health service managers worried about breaches of confidentiality or violations of patients' rights occurring during inappropriate discussions in canteens, hospital corridors or elevators.^[4] Social media has taken these concerns to new levels, where there is no control on how fast or far information shared on its platforms can spread.^[2,4] To date, the Health Professions Council of South Africa (HPCSA) does not have ethical guidelines for the use of social media. The South African Medical Association (SAMA) published on its website a guide titled 'Practical and ethical guidance for doctors and medical students',^[5] which provides practical recommendations for avoiding most ethical and legal pitfalls facing professionals and medical students on social media.

This article presents an overview of the findings of an analysis of ethical and legal issues facing professionals on social media.

Legal framework

The Bill of Rights in chapter 2 of the Constitution of the Republic of South Africa^[6] affirms the democratic values of human dignity, equality and freedom. It further confers the right of natural or juristic persons to approach the court to enforce their rights when they are threatened or violated. The rights relevant to this article are the rights to: (i) have dignity protected and respected; (ii) physical and psychological integrity; (iii) equality; (iv) privacy; and (v) freedom of expression. Many of the rights are not absolute, but their infringement ought to be justifiable and reasonable in an open and democratic society.^[7] The right to freedom of speech is not absolute, but limited to avoid violation of other people's rights. Notably, the

patient-professional relationship is characterised by an imbalance of power, patients being more vulnerable than the professionals treating them.^[8,9]

Limitations to freedom of speech are seen in the *Isparta v Richter* case,^[3] where the plaintiff was awarded damages after the first defendant, the partner of the former spouse, posted comments about the plaintiff's parenting skills on Facebook and tagged the former spouse, the second defendant. The plaintiff felt belittled and found one of the posts to be malicious and damaging to her reputation. The post attracted negative comments for allegedly allowing a teenage stepson to bath the plaintiff's younger daughter. Although the second defendant did not comment on the post, he did not remove the tag, therefore failing to distance himself from the defamatory posts. The judge found both defendants guilty of defamation.^[3]

The National Health Act (Act No. 61 of 2003)^[10] ratifies the patient's right to confidentiality, and this is consistent with the right to privacy stated in the Bill of Rights.^[6] Patients have a right to expect information shared with health professionals to be treated as privileged information and to be held in confidence.^[11,12] Breaching confidentiality erodes the public's trust in the medical profession.^[9]

Ethical framework

Morality and ethical principles ought to guide the professional's disclosure of patient information, both online and offline. The principles are: (i) autonomy – respect for self-determination; (ii) beneficence – promoting the interests of others; (iii) non-maleficence – avoiding or minimising harm; and (iv) justice – fair distribution of benefits and burdens.^[8] Professionalism is the foundation of the social contract with patients, and society expects professionals to behave empathically and professionally.^[12] The HPCSA's *General Ethical Guidelines*^[13] state that professionals ought to act quickly to protect patients from risk due to any reason, and to report violations and seek redress in circumstances where they have a good or persuasive reason to believe that the rights of a patient are being violated. Professionals therefore have the moral obligation to

bring inappropriate online behaviour of colleagues to their attention in a discreet manner, and even to ask them to take down any inappropriate posts.^[5,9,12] Ethical codes have no legal precedent, but hold professionals to a higher moral obligation in serving the public, and they can be enforced through professional standards.^[14]

Virtues depicting traditional medical practice are care, compassion, discernment, trustworthiness, integrity, conscientiousness, respectfulness, benevolence, truthfulness and justice.^[8] Professionals ought to conscientiously exercise both reasoning and moral judgement on social media. Importantly, patients ought not to be treated as a means to an end but with dignity, and their rights ought to be protected.^[8] The HPCSA guidelines provide guidance for disclosures that benefit patients directly or indirectly, protect the patient and others, and are linked with judicial or statutory proceedings.^[11] Any other disclosure in the absence of express consent is neither legally nor morally defensible and threatens the profession's reputation.

Discussion

Double identity: Social and professional self

The new generation of medical students have joined medical training with digital footprints and established social media habits unimaginable to their seniors.^[1] It is relevant that one study found that 52% of undergraduate medical students admitted to having embarrassing photos on Facebook.^[1] In another study conducted on male pharmacy students, most of them indicated that they viewed Facebook as a social domain separate from their professional lives.^[1] Professionals ought to think carefully before accepting friend requests from their patients or sending friend requests to them, because of the risk of blurring professional and personal lives.^[5,12] Importantly, professionals ought to have a reliable character, good moral sense, and an appropriate emotional responsiveness.^[8]

Some users are naive and believe social media to be platforms for self-expression without legal restraint. The *Isparta v Richter* case^[3] is a good example proving that online communication is subject to legal rules and that there are limitations to freedom of expression. The same laws and codes of conduct apply in the real world and cyberspace.^[12] Users of Facebook must be extremely careful not only about what they post but also with regard to posts on which they may be 'tagged', because if they do not 'un-tag' themselves or if they 'like', it will be construed that they agree with the shared content, as seen in the *Isparta v Richter* case.^[3]

The patient-professional relationship and its boundaries

Trust is the foundation of the patient-professional relationship.^[8,11] Information shared in confidence for the purpose of healthcare ought to be protected, because failure to do so violates the patient's rights and undermines the patient-professional fiduciary relationship. Professionals ought to uphold ethical standards and act in an ethical and legally defensible manner both offline and online, because it is the right thing to do. Failure to uphold ethical standards on social media exposes patients to embarrassment and psychological harm, thus undermining the principles of beneficence and non-maleficence.

Another area of concern is dissemination of patients' pictures on social media that might constitute invasion of privacy, defined as a situation in which someone fails to respect a person's right to keep certain personal information from being known.^[15] This could be for information sharing, educational purposes, or other reasons. Professionals are also warned against taking pictures without obtaining signed informed consent from their patients, especially if the patient is identifiable.^[2] Patients ought to explicitly give informed consent for the taking of pictures and for the dissemination of

their pictures on any media platform. Valid informed consent is characterised by: (i) disclosure of the nature and extent of the risks and benefits; (ii) appreciation and understanding of the risks and benefits; (iii) ability to make decisions and communicate them; (iv) voluntariness; and (v) authorisation to proceed with sharing pictures and other patient information.^[8,11,12,15,16] Professionals ought to acknowledge the imbalance of power between themselves and patients when facilitating informed consent, and this imbalance might compromise free will.^[8,11] In this instance, informed consent fulfils the legal role of protecting patients against violation of their dignity, privacy, and bodily and psychological integrity.

Studies assessing the use of social media by medical professionals have included reviewing content on medical blogs and other social media platforms.^[2,17] The findings confirmed a large number of cases in which it was easy for patients to identify their doctors, or even themselves.^[1] In one of the studies, the use of negative language describing patients was evident in 57% of cases.^[1] This is contrary to the professional's moral obligation to protect patients and the profession's reputation. Trust, non-maleficence, beneficence and transparency are important characteristics of a relationship between two or more parties. Relationships can be irrevocably severed because of breach of trust.^[18]

Social media as a work tool and professionalism

The workplace benefits from the use of group-based communication channels, and these include WhatsApp groups used to share information in clinical settings lacking sophisticated communication technologies. Work interaction groups on WhatsApp are becoming commonly used by professionals to communicate availability for shift work, traffic issues, and pictures of patients when requesting second opinions from colleagues – the list is endless. There are, however, challenges associated with some of these platforms because they may not be secure and messages may get sent to wrong recipients, thus compromising privacy and confidentiality. Sending pictures and requesting second opinions via these platforms permeate into the practice of telemedicine, posing further ethical and legal challenges, including storage and ownership of shared information. The use of uncontrolled and open-access social media platforms to share patient information may expose professionals to violation of ethical standards and the law.

Social media also presents a challenge of blurring boundaries in the patient-professional relationship,^[2,12] as seen in the Prof. Tim Noakes HPCSA disciplinary hearing. The incident was triggered by dietary advice provided by Noakes via Twitter to a breastfeeding mother advising her to wean her child on a low-carbohydrate and high-fat diet.^[19] It is advisable that professionals share generic information online, and avoid responding with direct medical advice to individuals. Further, as a standard precaution, it should be mandatory that any medical discussion professionals enter into on social platforms be accompanied by the advice that patients must consult their practitioners.^[12]

Information shared online is accessible to the public, and employers may use it to screen potential employees. Inappropriate content may affect one's professional standing.^[9,12] Societal expectations often go beyond the professional role and into the daily activities of professionals, and poor judgement demonstrated even in a personal capacity reflects negatively on both the individual and the profession.^[5,12] Interestingly, research conducted on medical students showed that frequent users of social media perceived regulating personal use of social media as an infringement of privacy, but still believed that the users ought to conduct themselves professionally.^[20] Facebook has the ability to create closed groups of selected participants

with common interests. The users are 'approved' by the administrator or other members of the page before they can gain access to the content and are able to contribute to discussions. Administrators should keep in mind that they do not own these social platforms, and owners may change security settings without consulting the users. In the future, information classified as private today might be opened to the public. Administrators have additional responsibilities of ensuring that information shared on their page does not violate ethical standards and laws, since they are ultimately accountable for the content.^[3]

Making negative comments about colleagues, patients and others on social media can be viewed as bullying and unprofessional, and has a corrosive effect on the affected person and others around them. Such comments may attract charges from the HPCSA and, worse, legal action from the complainant for defamation^[5,9,12] and other legally quantifiable losses. Defamation is the act of making statements about a person or organisation through publication of information considered harmful to their reputation.^[3,12] The HPCSA's *General Ethical Guidelines*^[13] state that 'a professional shall not cast reflections on the probity, professional reputation or skill of another person registered under the Health Professions Act or any other Health Act'.^[13] Professionals therefore ought to refrain from making negative and defamatory comments about colleagues on social media, but rather address issues of concern with the relevant individuals. Professionals ought to acknowledge benefits and weaknesses stemming from digitalisation of communication.

Crucially, information shared online is in the public domain and has relative permanence, even after it has ostensibly been deleted.^[12] Employers and professional bodies can use this information for disciplinary proceedings if it is deemed to have brought a profession or an organisation into disrepute.^[2,18] Disclosing work-related information can undermine the employee-employer relationship and violate employer policies, and may have negative consequences.^[17] In countries such as the USA and the UK, medical professionals who have violated ethical principles on social media have faced academic dismissal, termination of employment, and worse fates such as deregistration from professional boards.^[2,9] In most cases, such violations are not intentional but due to lapses in judgement.^[2,17]

To offset the potential minefield of negative occurrences, social media has potent benefits. It has the capacity to reach more people faster, and therefore has become a great tool for health promotion, education^[12] and professional networking.

Cyberpsychology and the disinhibition effect

The online disinhibition effect is defined as the lowering in the online social environment of the psychological restraints that normally serve to regulate behaviour.^[21,22] Disinhibitions are influenced by various factors ranging from invisibility, personality type and intensity of feelings to the type of social media platform being used.^[21] Like any other person, professionals are susceptible to disinhibition and will loosen up, communicate more freely and experience fewer inhibitions and behavioural boundaries online.^[12,22] Others disaggregate their online self, detaching it from the rest of their lives and, disturbingly, minimising personal accountability for their online actions to professional bodies and the law.^[21] This is a logical fallacy, because the same ethical standards and laws applicable offline also apply online. The fallacy facilitates temporary suspension of moral cognitive processes, triggering undesirable effects. Crucially, disinhibition is not the only factor influencing how professionals behave online, but it is a significant factor.^[22] Raising professionals' awareness of the disinhibition effect could play a significant role in

avoiding the ethical and legal pitfalls associated with the use of social media.

Conclusions

Professionals ought to ask themselves before posting on social media whether sharing certain information is legally and morally defensible, whether it reflects the professional conduct expected of them and whether it will benefit their patients, and importantly question their own intention for posting. Current medical training includes training on communication skills, but it does not address the benefits and risks of digitalisation of communication, especially social media. The HPCSA needs to develop social media guidelines and train medical trainers in this specific area. Medical schools need to address social media issues during new student induction briefings, and this should continue to advance in sophistication until graduation.

Health establishments ought to develop social media policies and train staff on risks associated with the use of social media. While social media has made it easier for professionals to communicate and share information, it holds the potential to threaten patients' rights and undermine professional and employer relationships if its use by professionals is not guided. Professionals should monitor what information they share and how they share it, and take precautionary measures to protect themselves from online dangers. Finally, social media is not immoral, but the intentions of professionals and how they use such platforms may lead to actions that are not morally or legally defensible.

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1. Von Muhlen M, Ohno-Machado L. Reviewing social media use by clinicians. *JAMIA* 2012;19(5):777-781. <http://dx.doi.org/10.1136/amiajnl-2012-000990>
2. Basevi R, Reid D, Godbold R. Ethical guidelines and the use of social media and text messaging in healthcare: A review of literature. *N Z J Physiother* 2014;42(2):68-80.
3. Roos A, Slabbert M. Defamation on Facebook: *Isparta v Richter SA 529 (GP)*. Potchefstroom Electron Law J 2014;17(6):2485-2868. <http://dx.doi.org/10.4314/pej.v17i6.18>
4. Snyder Y. Online professionalism: Social media, social contracts, trust and medicine. *J Clin Ethics* 2011;22(2):173-175.
5. South African Medical Association. Using social media: Practical and ethical guidance for doctors and medical students. <https://www.samedical.org/files/Guideline%20for%20Dr%20Using%20Social%20Media%20febr015.pdf> (accessed 12 January 2017).
6. South African Government. Constitution of the Republic of South Africa, 1996. Chapter 2: Bill of Rights. <http://www.gov.za/documents/constitution/chapter-2-bill-rights> (accessed 12 January 2017).
7. McQuoid-Mason D, Dada M. *The A-Z of Medical Law*. 1st ed. Cape Town: Juta, 2011.
8. Beauchamp TL, Childress JF. *Principles of Medical Biomedical Ethics*. 7th ed. New York: Oxford University Press, 2013.
9. Australian Medical Association. Social media and the medical profession: A guide to online professionalism for medical practitioners and medical students. https://ama.com.au/sites/default/files/Social_Media_and_the_Medical_Profession_FINAL.pdf (accessed 20 January 2017).
10. Republic of South Africa. National Health Act (Act No. 61 of 2003). http://www.saflii.org/za/legis/consol_act/nha2003147/ (accessed 29 August 2016).
11. Health Professions Council of South Africa. Confidentiality: Protecting and Providing Information. Booklet 10. Pretoria: HPCSA, 2008. http://www.hpcsa.co.za/Uploads/editor/UserFiles/downloads/conduct_ethics/rules/generic_ethical_rules/booklet_10_confidentiality_protecting_and_providing_information.pdf (accessed 1 February 2017).
12. Grobler C, Dhali A. Social media in healthcare context: Ethical challenges and recommendations. *S Afr J Bioethics Law* 2016;9(1):22-25. <http://dx.doi.org/10.7196/SAJBL.2016.v9i1.464>
13. Health Professions Council of South Africa. General Ethical Guidelines for the Health Care Professions. Booklet 1. Pretoria: HPCSA, 2008. http://www.hpcsa.co.za/Uploads/editor/UserFiles/downloads/conduct_ethics/rules/generic_ethical_rules/booklet_1_guidelines_good_prac.pdf (accessed 14 January 2017).
14. Littleton V, Meemon, N, Breen G, et al. An ethical analysis of professional codes in health and medical care. *Ethics Med* 2010;26(1):25-48.
15. Merriam-Webster Dictionary. [https://www.merriam-webster.com/dictionary/invasion%20of%20\(someone\)%20privacy](https://www.merriam-webster.com/dictionary/invasion%20of%20(someone)%20privacy) (accessed 15 January 2017).
16. Health Professions Council of South Africa. Seeking Informed Consent: Ethical Considerations. Booklet 9. Pretoria: HPCSA, 2008. http://www.hpcsa.co.za/Uploads/editor/UserFiles/downloads/conduct_ethics/rules/generic_ethical_rules/booklet_9_informed_consent.pdf (accessed 14 January 2017).

17. Knudson E. Social media presents unique risks for healthcare professionals. *AORN J* 2012;97(1):5-6. [http://dx.doi.org/10.1016/S0001-2092\(12\)00619-9](http://dx.doi.org/10.1016/S0001-2092(12)00619-9)
18. Shange N. Yes, your boss can fire you for social media posts – attorney. 2016. <http://www.heraldlive.co.za/news/2016/02/02/yes-boss-can-fire-social-media-posts-attorney/> (accessed 24 August 2016).
19. Genever S. Noakes in hot water over Twitter diet advice. 2015. <http://www.sabreakingnews.co.za/2015/04/22/noakes-in-hot-water-over-twitter-diet-advice/> (accessed 28 August 2016).
20. Farnan JM, Higa JT, Paro JAM, et al. Training physicians in the digital age: Use of digital media among medical trainees and views on professional responsibility and regulation. *AJOB Prim Res* 2010;1(1):3-10. <http://dx.doi.org/10.1080/21507711003697527>
21. Suler J. The online disinhibition effect. *Cyberpsychol Behav* 2004;7(3):321-326. <http://dx.doi.org/10.1089/1094931041291295>
22. Lapidot-Lefler N, Barak A. The benign online disinhibition effect: Could situational factors induce self-disclosure and prosocial behaviors? *J Psychosoc Res Cyberspace* 2015;9(2). <http://dx.doi.org/10.5817/cp2015-2-2:20-38>

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