Social Media 2.0-Ethics and Legal Issues

Kansas Health Care Association
Fall Conference 2015
Today’s Goals

• The legal, regulatory and practical pitfalls to avoid in the social media arena.
• The importance of having a clearly articulated social media policy.
• To provide practical and concise training to staff members, residents and visitors.
Areas of Concern

- Privacy and Confidentiality
- Human resources
- Marketing/Reputation
- Copyright
- Liability/discovery
- Defamation
- Securities (public companies)
Areas of Concern

- Risk = as a function of
  - the **likelihood/probability** of a given threat triggering or exploiting a particular vulnerability, and
  - the resulting **impact/severity** on the organization
Areas of Concern

• Privacy and Confidentiality
  – Greatest probability and vulnerability
  – Resident information, images, data
  – Regulations:
    • State and fed privacy, confidentiality, dignity
    • HIPAA/State laws
  – Reputation
Areas of Concern

• Human Resources
  – Hiring and firing
  – Discrimination
  – Facility drama
  – Concerted activity
Areas of Concern

• Marketing/Reputation
  – Your online presence is as, if not more, impactful as your curb appeal
  – What is said by “you”
  – What is said about “you”
  – Liabilities

  • Representations
Areas of Concern

• Copyright/Intellectual property
  – Use of images not yours
  – Just because it’s on the internet does not make it public domain
  – Particularly risking if doing it yourself
Areas of Concern

• Liability and Discoverability
  – Social media is standard for discovery
  – Trolling in advance of action
  – Retention/document hold
Policy Considerations

• Single “policy” not likely possible, components of existing policies
• Risk analysis to guide focus
• One “policy” for official facility communications
• Expectations for employee usage, likely subset of privacy and confidentiality training/policy.
Policy Considerations

- Official Facility Communications:
  - Part of larger marketing and communication effort
  - Target efforts to intended audience/purpose
Policy Considerations

- Limited official “voice(s)” of facility

- Fully knowledgeable regarding:
  - medium, privacy settings, access/restrictions
  - Legal do’s and don’ts, copyright rules/attribution
  - Privacy/confidentiality/authorization
Policy Considerations

- Limited official “voice(s)” of facility
  - Appropriate temperament
  - Knowledge of response expectations and internal communications
- Comment/Response: Establish expectations and plan in advance, not on the fly.
Policy Considerations

- Employee Expectations and Policy:
  - Focus on risks
  - Don’t prohibit what you cannot prohibit
  - Subset/component of privacy/confidentiality expectations
Policy Considerations

• HR-Employment Screening:
  – Separate rules for HR personnel
  – Know the rules for use, misuse
  – Risk: Discrimination
  – If used as part of hiring process: when, who, what
Policy Considerations

- HR-Discipline:
  - Less a “policy” versus knowledge of do’s and don’t
  - Stay atop what constitutes “concerted activity” to minimize risk
Policy

1. Social Media Policy
   a. Message to all employees
   b. Suitable for training as subset of privacy/expectations and marketing/communication
   c. Policy review of current privacy/confidentiality

2. Instructions/guide for Official Facility use
Policy

3. HR rules
   a. Screening usage
   b. Discipline
Policy

Sample discussion
Questions
Policy Development Considerations and provisions:

- Only authorized individuals can speak for the facility.
- Require employees who identify themselves as employees of your facility to include a disclaimer on their social media page that states that any postings are their sole opinion and not the opinion of the facility where they are employed.
- Not to interfere with your work commitments.
- No communication, photos, shall include any resident images, information.
- Discourage “friending” residents and/or families.
- Discourage supervisory staff from “friending” those that they manage.
- Consistent with other polices, advise employees that harassing, discriminatory or defamatory conduct involving coworkers, residents' family members, residents, vendors or any other person associated with the facility will not be tolerated regardless of whether it is spoken, in print or posted online. Disciplinary actions noted in existing anti-harassment or discrimination policy apply to all social media also.
- Remind that the facility, like anyone else, may monitor electronic media. If the employee fails to abide by the above guidelines or the company's other policies while online, the employee may be subject to disciplinary action by the company up to and including termination.
- AVOID: “don’t say anything about facility/company” “don’t talk about work”

Draft, train, document acknowledgment.

Facility Plan: Less policy, more plan with instructions

- Who, what, where, when, how and why
- Authorized voices/users on behalf of facility
  - Understands medium
  - Goals
  - Rules: formal and informal
  - Laws
- Ownership-Use does not equal ownership
  - Passwords maintained by ______
- Monitor expectations-Not big brother, but cannot bury head in sand

HR Rules:

- Screening:
  - If used, when, where, by whom.
  - Separate from decision-maker.
    - Knowledgeable regarding discrimination/protected categories.
  - Case by case
- Discipline:
  - Case by case
  - Caution of concerted activity issues
Sample Policies from other Health Care Providers

The best social media policy will be one created to specifically meet the needs of your organization; simply adopting another’s policy will not provide the best protection or the best guidance for your staff. However, with many available for review, consider some research as to areas to be covered.

AHCA/NCAL Social Media Guidelines and Policies

Social media encompasses a broad sweep of online tools and activity, such as Blogger, Facebook, LinkedIn, Twitter, YouTube, and numerous other services. We recognize that many of you already participate in social media. AHCA/NCAL is engaging in many of these arenas, as well. The following are policies and guidelines for staff, members, and friends of AHCA/NCAL on participating in social media. Most of it is common sense, but we can all use some guidance or reminders from time to time. If you have any questions or comments, please let us know. As social media evolves, so may these guidelines – be sure to check back for updates.

Why Social Media?

Social Media tools are becoming an increasingly common means of communication. Emerging social media platforms are changing the way our association engages with members, colleagues, and the world at large. As an association, we believe emerging social media platforms can help us build a stronger, more successful long term care community.

General Policies

1. Only staff authorized to do so may speak on behalf of AHCA/NCAL.
2. Only members of the Knowledge Management Web staff may set up official presences on behalf of AHCA/NCAL on social networks (e.g., LinkedIn, Facebook, YouTube, Twitter, etc.).
3. All policies set forth in the AHCA/NCAL Employee Handbook, privacy policy, and terms and conditions apply. The same guidelines that apply to AHCA/NCAL’s staff activities in general apply to their activities online. Third-party sites may have their own terms and policies, with which participants should familiarize themselves.
4. You may not share information that is confidential and proprietary about the association.

Guidelines for Participating in Social Media

Be Respectful. Communicate clearly and courteously. Before hitting send or submit, take a moment to reflect on how what you have written will be perceived by its audience. If someone posts something with which you disagree, do not escalate the conversation to an argument. Hard as it may be to believe, others might not always share your point of view. Accept and respect that – you may learn something.

Be Honest. Respect the intellectual property of others, post only what you have the rights to post. When in doubt, ask permission.
Be Discrete. Social Media is not the place for posting confidential, proprietary, or any information that you would not be comfortable seeing on the front page of the New York Times. Online postings can have a lengthy half-life – assume that what you post will be around for a long time. Be careful to protect your privacy. Personal and professional lives often become blurred on social media – be thoughtful about how you present yourself online.

Be Authentic. Don’t try to hide your affiliation with AHCA/NCAL, especially if you’re addressing a topic related to long term care. On the flip side, don’t represent yourself as an official spokesperson for AHCA/NCAL if you are not.

Be Helpful. Make your posts meaningful – think of how they could benefit others. Add value whenever possible. If someone has a question you can answer, by all means do so. Conversely, don’t try to respond if you don’t know the answer. If you see misrepresentations made about AHCA/NCAL, you should inform an authorized AHCA/NCAL spokesperson and they will decide what, if any, response will be taken.

Be Engaging. Effective use of social media tools requires listening and responding. If you’re not willing to engage in the conversation, reconsider whether you should delve into social media.

Respect Association Commitments. Unless specifically assigned, social media activities should not interfere with regular work commitments.

For Mayo Clinic Employees

The following are guidelines for Mayo Clinic employees and students who participate in social media. Social media includes personal blogs and other websites, including Facebook, LinkedIn, Twitter, YouTube or others. These guidelines apply whether employees and students are posting to their own sites or commenting on other sites:

1. Follow all applicable Mayo Clinic policies. For example, you must not share confidential or proprietary information about Mayo Clinic and you must maintain patient privacy. Among the policies most pertinent to this discussion are those concerning patient confidentiality, government affairs, mutual respect, political activity, Computer, E-mail & Internet Use, the Mayo Clinic Integrity Program, photography and video, and release of patient information to media.
2. Write in the first person. Where your connection to Mayo Clinic is apparent, make it clear that you are speaking for yourself and not on behalf of Mayo Clinic. In those circumstances, you should include this disclaimer: "The views expressed on this [blog; website] are my own and do not reflect the views of my employer." Consider adding this language in an "About me" section of your blog or social media profile.
3. If you identify your affiliation to Mayo Clinic, your social media activities should be consistent with Mayo’s high standards of professional conduct.
4. If you communicate in the public internet about Mayo Clinic or Mayo Clinic-related matters, you must disclose your connection with Mayo Clinic and your role at Mayo.
5. Be professional, use good judgment and be accurate and honest in your communications; errors, omissions or unprofessional language or behavior reflect poorly on Mayo, and may result in liability for you or Mayo Clinic. Be respectful and professional to fellow employees, business partners, competitors and patients.

6. Ensure that your social media activity does not interfere with your work commitments.

7. Mayo Clinic strongly discourages “friending” of patients on social media websites. Staff in patient care roles generally should not initiate or accept friend requests except in unusual circumstances such as the situation where an in-person friendship pre-dates the treatment relationship.

8. Mayo Clinic discourages staff in management/supervisory roles from initiating “friend” requests with employees they manage. Managers/supervisors may accept friend requests if initiated by the employee, and if the manager/supervisor does not believe it will negatively impact the work relationship.

9. Mayo Clinic does not endorse people, products, services and organizations. Official Mayo Clinic accounts should not be used to provide such endorsements. For personal social media accounts where your connection to Mayo Clinic is apparent, you should be careful to avoid implying that an endorsement of a person or product is on behalf of Mayo Clinic, rather than a personal endorsement. As an example, LinkedIn users may endorse individuals or companies, but may not use Mayo Clinic’s name in connection with the endorsement, state or imply that the endorsement is on behalf of Mayo Clinic, or state specifically that the endorsement is based on work done at Mayo Clinic.

10. Unless approved by the Center for Social Media, your social media name, handle and URL should not include Mayo Clinic’s name or logo.

If you have any questions about what is appropriate to include in your social media profile(s), contact the Center for Social Media.

**VUMC Social Media Policy [Vanderbilt]**

I. **Purpose:** To provide guidelines outlining how Vanderbilt University Medical Center (VUMC) supports institutional communication goals through social media platforms.

II. **Policy:** VUMC offers support of institutional communication goals, as well as provides social computing guidelines for VUMC faculty and staff engaging in online discourse and identifying themselves with VUMC or Vanderbilt University. This policy is intended for internet activities that associate or identify a VUMC faculty or staff member with Vanderbilt, use Vanderbilt email addresses, or discuss Vanderbilt. In keeping with the Electronic Communications and Information Technology Resources policy (HR-025), Vanderbilt email addresses should not be used in conjunction with unofficial or personal social media accounts and profiles. This policy is not intended to guide online communications when employees do not associate or identify themselves with Vanderbilt.

III. **Definitions:** Content Owners, for the purpose of this policy, are those assigned the responsibility of maintaining, monitoring, and moderating a VUMC social media platform. Official communications refer to those done in VUMC’s name, (e.g., a Vanderbilt Health Facebook page).
A. Content Owner – Assigned by department as the individual responsible for monitoring and maintaining web content.

B. Moderator – Assigned by Content Owner and/or department as the individual for moderating comments and postings by internal and external users, including deleting comments and postings that do not meet the criteria set forth in this policy.

C. Social Media Platforms – Technology tools and online spaces for integrating and sharing user-generated content in order to engage constituencies in conversations and allow them to participate in content and community creation. Examples are Facebook, Twitter, LinkedIn, Google+ and YouTube.

IV. Specific Information:

A. Official Institutional Social Media Communications:

1. Because of the evolving nature of social media platforms, these guidelines do not attempt to name every current and emerging platform. Rather, they apply to those cited and any other online platform available and emerging, including social networking sites and sites with user-generated content. Examples include, but are not limited to the following:
   - YouTube
   - Google+
   - Facebook
   - Flickr
   - LinkedIn
   - Twitter
   - Blogs
   - Social media content that is hosted internally and protected by VUNet ID/Password

2. Institutional representation via online social media platforms can only be initiated and authorized through efforts of the Strategic Marketing department, and the Vanderbilt School of Medicine and the Vanderbilt School of Nursing. Any sites or pages existing without prior authorization as required above are subject to review when discovered and may be amended or removed.

3. Content Owners, as named by their departments or department’s leadership, are responsible for posting and using content and maintaining compliance with VUMC Credo behavior, HIPAA (Health Insurance Portability and Accountability Act) and policies related to Conflict of Interest, Privacy, Security, Safety and Human Resources, and FERPA (Federal Education Records Protection Act). Content Owners are also required to keep abreast of changes in policies or functionality of the social media platforms in use and maintain compliance with terms of service.
4. Content Owners are responsible for monitoring and maintaining web content as follows:

a. Content is current and accurate.

b. Content Owners engage in communications that are acceptable in the VUMC workplace and respect copyrights and disclosures. Proprietary financial, intellectual property, patient care or similar sensitive or private content may not be revealed.

c. Content Owners are responsible for gaining the expressed consent of all involved parties for the right to distribution or publication of recordings, photos, images, video, text, slideshow presentations, artwork, and advertisements whether those rights are purchased or obtained without compensation.

d. Content Owners are responsible for constantly monitoring postings and comments to social media sites, and for deleting postings that do not adhere to our policies.

5. Content Owners and/or Moderators sign a Content Owner/Moderator Terms and Agreement Form. This form is renewable annually and is monitored by Strategic Marketing. (See Appendix A).

6. My Health at Vanderbilt is a secure communications portal and the authorized channel to support messaging and dialogue with patients and their clinical care providers.

B. Guidelines for Online Professional or Personal Activity: Online social media allows VUMC faculty and staff to engage in professional and personal conversations. These guidelines apply to faculty and staff who identify themselves with Vanderbilt in social media venues such as professional society blogs, LinkedIn, Google+ and/or Facebook, for deliberate professional engagement or casual conversation.

1. Follow the same VUMC Credo behavior, HIPAA, Conflict of Interest policy, Privacy and general civil behavior guidelines cited above including respecting copyrights and disclosures, and not revealing proprietary financial, intellectual property, patient care, or similar sensitive or private content.

2. If VUMC faculty/staff identify themselves as a member of Vanderbilt faculty or staff in any online forum, faculty/staff make it clear that they are not speaking for Vanderbilt, and what they say is representative of their individual personal views and opinions and not necessarily the views and opinions of Vanderbilt.

3. VUMC Faculty and staff are thoughtful about how they present themselves as a VUMC faculty or staff member in online networks. By virtue of identifying oneself as a part of Vanderbilt in such a network, faculty/staff connect themselves to, and reflect upon, VUMC colleagues, managers, and even VUMC patients and donors.

4. Remember that all content contributed on all platforms becomes immediately searchable and can be immediately shared. This content immediately leaves the contributing individual faculty/staff members’ control forever. If someone or some group offers to pay faculty/staff for
participating in an online forum in their VUMC role, offers advertising for pay and/or for endorsement, this could constitute conflict of interest, and VUMC policies and guidelines apply.

6. If someone from the media or press contacts faculty or staff about posts made in online forums that relate to Vanderbilt in any way, faculty/staff alert their manager/leadership and contact News & Communications before responding.

7. If a patient or family member posts complaints about service or other issues, review and follow the Social Networking Response Guide (See Reference Work).

8. Job postings follow Vanderbilt’s Human Resources (HR) established processes. Social Media may not be used in place of HR processes.

9. Strategic Marketing, News & Communications VUSM, and VUSN provide official VUMC and/or VUSM and VUSN information that may be appended to social media sites (See Reference Works).


VUMC Best Practices

Listen first. Observe before you engage. Listen to the conversations, view the content. See what people are talking about and what they’re interested in.

Think it through. Have your goals and purpose of participation. Know how you will add value. Make sure you’re choosing the most relevant platform.

Add value to the discussion. Social media at its best is an exchange of helpful or interesting information. In order to be accepted in the community, bring content of value.

Adhere to Vanderbilt University compliance requirements, policies and guidelines. This includes but is not limited to HIPAA and the disclosure of proprietary information.

Be respectful. Don’t post material that is profane, libelous, obscene, threatening, abusive, harassing, hateful, defamatory or embarrassing to anyone.

Abide by the law. Don’t post content that violates any state or federal laws. Get permission to use or reproduce copyrighted content.

Be yourself. Social media is all about transparency and connecting personally. Don’t hide your identity or affiliations. Show your personality.

Use a disclaimer. If you participate in online media and you reveal your affiliation with Vanderbilt or your content has something to do with your work here, state that your opinions are your own and do not represent the views of the organization.
**Be relevant and accurate.** This is one reason why you should listen before joining, and continue to listen. Be sure your content and communications are relevant to those with whom you are engaging. Make sure your posts are accurate.

**Don’t be argumentative.** These platforms allow for opinions and civil discussions, not rude and hateful comments to spur arguments.

**What you say** can and will be used against you. Everything you say or do online is likely to be stored forever, even if you delete it.

**It's not a one-way conversation.** Social media is not a place for you to talk without listening, commenting and responding to the conversations around you. Engage with others.

**Use your best judgment.** If you are unsure about your post, discuss content with your manager before commenting.
Social Network Response Guide
Is the post positive?

YES
Is the post visible to the general public?
No
Do not respond. Record.
Yes
Is the post highly personal?
No
Do not respond. Record.
Yes
Respond using the considerations below

Transparency
Disclose your Vanderbilt connection.

Timelines
Take time to develop a thoughtful response. Use your best judgment on whether to respond to an older post.

Tone
Your tone should reflect the VUMC CREDO. Be personable.

Sources
When correcting facts, cite only official sources and link to them where possible. A good starting place is the VUMC Fact Book found on VanderbiltHealth.com/main/guide

Contact your manager and respond:
“I am sorry to hear about the situation. I’d like to help. Email me at connect@vanderbilt.edu.”
Send to social media team.

Send to social media team.

include the following when sending to social media team:
Name, area, role, phone, post with links, and any action taken.

NO

Is it a rant or on a site dedicated to criticisms/complaints?
Yes
Record and monitor.
No

Are any of the facts wrong?
Yes
Is this your area of expertise?
No
Respond:
“I am sorry to hear about your experience. We are always looking to improve. Please email details to connect@vanderbilt.edu.”
Send to social media team and monitor.

Is it a complaint about a negative experience?
Yes
Record. Send to social media team.
No

Is this your area of responsibility?
Yes
Do you think responding would be helpful to the poster?
No
Contact your manager and respond:
“I am sorry to hear about the situation. I’d like to help. Email me at connect@vanderbilt.edu.”
Send to social media team.

No

Is the situation resolvable?
Yes

NO

Send to social media team.

NO

Send to social media team.

NO

Send to social media team.