

Social Media & the Health Care Professional

How to Get Fired Because of Facebook

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Overview

- (A) What is personal information?
(it depends on who you ask)
- (B) Discipline Over Online Content
(we're not Friends anymore??)
- (C) The Benefits of Social Media
(seriously, no syh)
- (D) Crisis Management & Social Media
(when it all hits the fan)

(A) What is Personal Information?

- technology and Gen-Y continuing to blur personal/professional lines; is creating new personal information paradigm
- social media law: no clean lines left between employment, intellectual property, IT, online marketing, litigation evidence, privacy, etc
- patient personal information: employee duties overlap with health professional duties

Patient Information

- EMS professionals are trustees of personal health information under PHIA
- Paramedic Association of Manitoba *Code of Ethics and Professional Conduct* – to respect patient confidentiality
- high duty to maintain confidentiality
- challenge is whether you are creating patient relationships and transforming social media information into medical advice

(B) Patient Information & Social Media (i.e. how to get fired even faster)

- very low tolerance in the case law for revealing patient information:
 - *Credit Valley Hospital* (Jan 2012 Ont Arbitration) – ESR posted 2 pictures on Facebook of scene where patient committed suicide in hospital parking lot
 - revealed details re: death, age and location of patient
 - termination upheld – should have acted on presumption that suicide victim was a patient – exercise reasonable diligence

Patient Information & Social Media (i.e. how to get fired even faster)

- Credit Valley (con't)
 - Factors to support upholding termination include:
 - not remorseful
 - not a momentary lapse because time elapsed between the 2 photos with commentary posted
 - lied to hospital 2x during investigation
 - checkered discipline history
 - important to deter others

Patient Information & Social Media (i.e. how to get fired even faster)

- *Chatham-Kent v CAW* (Mar 2007, Ont Arbitration) – employee blogged about nursing home residents and co-workers
 - used first names and posted some pictures
 - 8 year employee, immediately apologized, but termination upheld
 - insolence, breach of confidentiality
- Unusual patient details could still breach confidentiality, even if no name used (e.g. nails in skull)

Privacy & the Workplace Computer: *R v Cole*

- important SCC case released last week Friday
- high school teacher caught with child porn on his work-issued laptop through routine IT maintenance check
- reasonable expectation of privacy on a workplace computer – policies and practices can diminish the expectation but not eliminate it
- at trial, Charter rights violated because no police warrant so all computer evidence excluded; case dismissed because Crown had no case

R v. Cole (con't)

- was violation of right to be free from unreasonable search and seizure (Charter s. 8), but was justified in the circumstances and would not bring the administration of justice into disrepute (Charter s. 24)
- court ordered evidence to be admitted in a new trial
- employers cannot waive employee's consent and hand material to police without lawful authority (search warrant)

WFPS Electronics and Camera Use in the Workplace Policy (hot off the press!)

Highlights:

- Purpose: legislative compliance, safety & privacy
- Personal devices:
 - May not be carried while on duty
 - May not be present in any department vehicles
 - Should remain locked in a station locker (in the vibrate or silent mode only) while an employee is performing work duties
 - Use shall be limited to time periods while on scheduled or mandated break/relief
- Use of personal cell phone cameras, stand-alone digital or conventional image, or video cameras while on duty is strictly prohibited.
- Images taken by an employee during their employment are City property and shall only be used for official department documentation and reports, and will not be available for personal use.

WFPS Electronics and Camera Use in the Workplace Policy

Highlights (con't):

- Images may not be printed, copied, scanned, e-mailed, **posted**, shared or distributed outside the department in any manner without the written approval of the WFPS Privacy Officer. This prohibition includes posting photos obtained during the performance of work related duties on personal web sites, **social networking web sites**, or on other public safety agency or association web sites.

Consequences:

- Failure to comply may result in termination of device usage privileges, and may result in disciplinary action up to and including dismissal.

Roles and Responsibilities:

- All employees of the Winnipeg Fire Paramedic Service are responsible for complying with the policy. Supervisors who fail to act when violations occur will also be accountable.

Insolence & Social Media

- *Lougheed Imports Ltd* (2010 BC Labour Board)
 - car dealer – posted several threatening, violent and defamatory comments about employer on Facebook
 - insolent comments (my supervisor sucks), plus attacked integrity of business (the company is full of crooks)
 - not a campaign to build a case against employee – appropriate for employer to proceed slowly to understand issues

More Insolence & Social Media

- *Canada Post v CUPW* (March 2012, Alberta Arbitration)
 - 14 separate posts – offensive and frightening
 - she went beyond general criticism of management; targeted and threatened individual identified manager
 - no privacy settings on Facebook, so supervisor found it through regular Google search
 - actual damage to target (he took stress leave)
 - lack of remorse
 - termination upheld

Competing Rights & Social Media

- *Taylor-Baptiste v OPSEU* (July 2012, Ont Human Rights Tribunal)
 - Union President set up blog to communicate with union members about ongoing contract negotiation
 - Manager filed human rights claim about Union President’s discriminatory comments
 - Tribunal held comments were hurtful, but not discrimination “with respect to employment” – rather, purpose of comments were about union-management concerns

(C) Benefits of Social Media!

- effective and quick communication tool
- great for pushing information to public
- examples:
 - during 2009 H1N1 epidemic, US Department of Health held info sessions over YouTube and iTunes to update people about the disease, and used texts and Twitter re: vaccine shot information
 - shooting in Aurora, Colorado – Red Cross urged people to use Twitter and social media to let family know they were okay
 - Tsunami in Japan – phone lines and infrastructure devastated; Twitter and other social media used to communicate and locate people

(D) Crisis Management & Social Media

- many employers have the basics covered now – social media policies, codes of conducts and practices
- crisis management remains key concern for employers: *how can traditional, large organizations move quickly to handle the crisis?*
- crisis management is not new – but the exponential impact and speed of social media is new

Crisis Management & Social Media (cont'd)

- Practical Tips for Crisis Management:
 - ensure policies & procedures in place – coordinate across departments and jurisdictions
 - address the BYOD issue head on – it's happening anyway, so how to contain/embrace/negotiate this reality
 - have protocol and team in place for inevitable social media crisis – compile team from IT, HR, Marketing, Unions, etc and decide ahead of time how you'll deal with the crisis; have PR and legal teams lined up
 - don't create evidence that will feed a medical malpractice, termination or privacy breach case in the first place

Questions?
Thank you.