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## Did your practice get burned online? Reach out — and redirect

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When you confront negative reviews of your providers or your practice on review sites, managing a strategic response can be a net plus. Instead of hurling responses online, set up a strategy that involves direct patient outreach and an invitation to share positive news.

As consumer review sites have grown in recent years, reports have surfaced of doctors being embarrassed — or embarrassing themselves — on sites like Yelp and ZocDoc, which allow users to post reviews that are often unflattering or unfair (*PBN 2/14/13, 6/20/16*). When providers respond, they can make matters worse and even violate HIPAA.

The HHS Office for Civil Rights (OCR) recently found a dental practice in North Carolina “impermissibly disclosed a patient’s PHI on a webpage in response to a negative online review.” In its investigation, OCR cited a response to a patient’s complaint that an employee of the dental practice posted online. In part, the response read: “It’s so fascinating to see [complainant’s full name] make unsubstantiated accusations when he only came to my practice on two occasions since October 2013. He never came for his scheduled appointments as his treatment plans submitted to his insurance company were approved. He last came to my office on March 2014 as an emergency patient due to excruciating pain he was experiencing from the lower left quadrant.”

The response contained three impermissible HIPAA breaches — name, date of treatment and nature of treatment — in the first two sentences. OCR fined the practice \$50,000.

### Don't fight in public

Experts who spoke to *Part B News* generally advised against taking it to the patient on the websites.

“HIPAA’s privacy rules allow a covered entity to disclose PHI under specified conditions — such as to defend itself in an actual lawsuit — but not simply to rebut allegations in the court of public opinion,” says Wes Hall, partner with Chamblee Ryan P.C. in Dallas.

Claire Ernst, director of government affairs for the Medical Group Management Association (MGMA) in Washington, D.C., says prior to engaging any online reviews, “it is advisable that practices seek legal counsel specifically for their online reputation management efforts that considers not only federal HIPAA compliance, but also any state privacy laws that may be applicable to them.”

And it doesn’t matter how much of their own protected health information (PHI) the patient leaked in their review, either. Eric Fader of the Day Pitney law firm in New York City said he advised one of his clients a few years ago to not respond to a review in which the patient provided several treatment details because, “while obviously under HIPAA a patient can disclose his own PHI, if you as the practitioner add anything at a public site that goes beyond what the patient disclosed, that’s a HIPAA violation.”

In addition to the potential compliance issues, there’s the impression an online argument with a patient might leave, no matter how right you think you are, Fader says.

“If you have a patient ranting and raving on the site and you responded [on the merits], even if it were not a HIPAA violation, you still wouldn’t come off looking better to an unbiased observer,” he says. At best you might respond: “I’m sorry you feel that way, we disagree; we can’t say anything further.” But silence is probably the better option.

### Go behind the scenes

A better way to go, according to Steven Szakaly, consumer insights and analytics executive with reputation management firm PatientBond in Salt Lake City, would be to “try to solve that underlying problem” by approaching the patient directly about their negative experience. In order to do that, you need have to have gotten the patient’s opt-in to receive messages from the practice, which you may be doing anyway for scheduling purposes.

When enabled, you can approach the patient politely — preferably by expressing interest in taking care of the problem for them — and working it out behind the scenes, Szakaly says. Once that’s achieved, you can ask the patient if they’ll kindly remove the bad review.

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Follow-up on that request is also important, because “when you’re upset about something, it’s really easy to have the energy to say something publicly, but when you have a good experience that’s not necessarily the case,” Szakaly says.

#### Like it? Review it!

You can also shift the balance to good reviews by inviting patients who are pleased with their service to post them. This involves having a system in place whereby patients who have opted in for messaging get a notice asking how the practice did, Szakaly suggests. If it’s bad news, reach out to the patient to fix it — and if it’s good, ask them to put their review online.

“That way, you’re quickly sorting through the really good and the really bad and hopefully you can cut off someone who didn’t have a good experience before they even get to the point of being frustrated enough to write a bad review,” Szakaly says. Make it easy for the patient by including a link to the review site you favor in the request.

#### Resource

- OCR, “Four HIPAA Enforcement Actions Hold Healthcare Providers Accountable With Compliance,” March 28, 2022: [www.hhs.gov/about/news/2022/03/28/four-hipaa-enforcement-actions-hold-healthcare-providers-accountable-with-compliance.html](http://www.hhs.gov/about/news/2022/03/28/four-hipaa-enforcement-actions-hold-healthcare-providers-accountable-with-compliance.html)



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