Introduction
Do you ever think about how online patient reviews may be impacting your bottom-line? What is the state of your online reputation? Have you taken steps to improve and/or bolster your online presence? Is your online reputation important to your success? Do you have a plan to combat negative patient postings?

These are just a few of the questions facing physicians today, in this social media era. As with any business, medical providers are subject to online scrutiny now, more than ever. It is important to note however that you need not sit idly by with regard to managing your online reputation. There are many resources available and actions you can take to improve your online reputation, and to combat negative online postings. This article is intended simply to help open your eyes to the issues facing the management of online information with regard to your health care practice, so that you may be better prepared to handle this evolving, social media driven market place.

What is the State of Your Online Reputation?
If you have not done so already, I challenge you to “Google” yourself. There is likely an array of positive and/or potentially negative information already on the Internet concerning you and/or your practice. Nowadays, whether you like it or not, physicians are commonly reviewed on websites such as: Yelp, Complaints Board, Ripoff Report, Doctor Scorecard, Angie’s List, RateMDs, Vitals, HealthGrades — and approximately 40 others.

If searching your name reveals information regarding your practice that is all positive, consider yourself in good luck. Even the best of providers can find themselves subject to negative comments and/or postings on the Internet.

To that end, even if your online reputation is currently very strong — be aware — it can change in an instant. As Warren Buffet once famously said, “It takes 20 years to build a reputation and five minutes to ruin it.” It is recommended that you review your online reputation frequently. Also, take some comfort in knowing that there are steps you can take to further improve and/or promote your online presence, and to minimize the impact of negative postings.

Will a Negative Online Reputation Impact Your Practice?
According to Insight Marketing Group, a full service healthcare marketing company:

- More than 92% of buyers regularly check reviews online before making a purchase or service decision.
- More than 100 million people choose Healthgrades.com to determine who their physician will be — and that number is growing.
- Searching for healthcare information is the third most common online activity.
- 75% of searches don’t go past the first page of Google to get their information.

As the above would suggest, consumers, whether of health care services, or other, use the Internet to gain information before making their purchasing decisions. In light of this evolving trend, it is not just marketing companies who are looking at impact online postings can have on the service industry — but also Harvard researchers.

Harvard University has created the “Digital Media Project,” which aims to resolve emerging and outstanding problems revealed by recent social and technological changes. In researching these topics, the Harvard Business Review found that a “one star increase on Yelp leads to a five to nine percent increase in revenue.” While this particular study did not relate specifically to services provided by physicians, the numbers nevertheless show the importance and/or impact an online reputation can have on a business’ bottom line.

What Can You Do To Improve Your Online Reputation?
Since online reviews and ratings have gained importance in recent years, the market has responded with the emergence of many companies that now specialize in providing services/resources to improve a healthcare provider’s online reputation. Listed in no particular order, these companies include: Reputation 911.com, Reputation.com, and Physiciansreputationdefender.com. These websites often offer not only services for helping to improve your online reputation — but also offer advice for improving your reputation — short of hiring an expert.

Most reputation management experts/companies encourage providers to work to disseminate positive online information, as one of the primary means of improving the provider’s online status. It is encouraged that providers garner support from their patients, and request positive feedback and/or online reviews from patients who have had positive experiences. Also, positive postings will often outweigh and/or push to the bottom negative postings — such that the negative information will become marginalized.


What Options are Available In the Event of a Negative Online Posting
Most media experts suggest that you do not engage in a public battle over a negative comment and/or factual dispute with a disgruntled patient. Oftentimes adding information to the website and/or responding publicly can result in further attention to the issue, and result in additional negative publicity. The overwhelming agreement among experts is that you handle these issues privately. Simply because the disgruntled patient has taken to the Internet, does not mean you have to respond in the same fashion.

One way to handle a negative posting is to contact the patient directly to discuss their concerns and do what you can to rectify any issue. This of course may also be done with the assistance of legal counsel, depending on the nature of the complaint.

Also, as mentioned above, often times positive postings can be used to outweigh and/or bury negative postings. For those physicians who work hard to bolster their online reputation, it is likely that one or two negative postings will go unnoticed.

In some cases, a cease and desist letter from a lawyer may help encourage the patient to retract their comments and/or change their position. In the event that initial efforts to resolve the negative posting are unsuccessful, additional legal measures can be pursued.
Such legal measures include lawsuits against the person posting the information and/or the website hosting the information.

**Have Doctors Been Successful With Legal Challenges Brought In Response To Negative Online Postings?**

The primary argument a physician can make with regard to challenging negative information posted online would be to argue that the information is “defamatory.” Generally speaking, defamation is a term defined as: A legal claim involving injury to reputation caused by false statements of fact, and includes both liable (written or recorded statements) and slander (spoken statements).

If the information posted online is defamatory, there is better chance that you will be able to either convince an opposing party pre-suit, or during litigation, that the information must be taken down, or a penalty will be faced. If the information is however not defamatory, but merely a negative “opinion,” it will be more difficult to challenge the posting. In such an instance, it will likely become more important to hire a consultant or expert, to find ways to promote the positive portions of your online profile, and to help marginalize the negative information available.

In New York, a physician by the name of Dr. Tener recently sued over a comment posted to the physician review website, Vitals.com. The comment, posted April 12, 2009, was as follows: “Dr. Tener is a terrible doctor. She is mentally unstable and has poor skills. Stay far away!!!” As advised you should do herein, Dr. Tener discovered this posting when performing a Google search. Through the course of litigation, Dr. Tener’s claims were met with the defense that the statements were merely an opinion, and not a defamatory factual statement. The case was ultimately dismissed on technical ground regarding the timeliness of the lawsuit, but the Court nevertheless went on to state that “even if this action was found to be timely, dismissal is warranted for failure to state a cause of action, as the alleged defamatory statements are statements of opinion, and, thus, are not actionable.” This case example shows how the specific nature of the negative comments can impact the difficulty in pursuing a legal claim.

A similar result occurred in a case involving an Oregon dentist. A dentist recently sued a former patient who posted on Yelp.com, Dr. Oogle.com, and Google, negative comments concerning the provider. Ultimately, the Oregon Court held that the communication was protected by statutory law, and not subject to penalty. The statutory basis that allowed the negative comments to exist was derived from what is known as an anti-SLAPP legislation. SLAPP stands for Strategic Lawsuit Against Public Participation. It refers to a lawsuit filed in retaliation for someone speaking out on a public issue or controversy. The purported purpose of a “slapp” is to intimidate and silence the target through the threat of an expensive lawsuit. In an effort to prevent slapp suits, and to err on the side of protecting the First Amendment Freedom of Speech and to encourage public debate, anti-slapp laws exist in many states, not including Ohio, and serve to protect public comments/opinions. To that end, in states such as Oregon, it is even harder for a doctor to prevail on a claim related to an online posting — as such public comment is often protected by anti-slapp legislation.

In another recent case, the Supreme Court of Minneapolis addressed the issue of a doctor’s complaint after a former patient posted, “Dr. McKee is a real tool!” In this case, the doctor filed suit alleging more than $50,000 in damages arising out of claims based on theories of defamation. Unfortunately for the doctor, the Minneapolis Supreme Court ultimately held that the statements were substantially innocuous and that the statements were a matter of opinion and therefore, “cannot be proven true or false.” This decision again highlights the real difficulty with presenting a legal case against a patient who posts a negative opinion concerning you and/or your practice.

Although the above examples reflect the challenges with bringing a lawsuit arising out of a negative online posting, there have indeed been many instances throughout the United States where a physician has been successful in challenging a negative posting. In many of the successful cases, the disgruntled person making the posting and/or the website is forced to take down the post and/or pay for their act of defamation. Though it is often an uphill battle, defamatory statements and/or negative posting should be challenged in the appropriate circumstances.

**Other Considerations**

As previously mentioned above, if you find yourself the subject of a negative posting and/or believe you need to take action to respond to information you read about yourself on the Internet, it is recommended that you consult an online reputation specialist and/or an attorney.

Often times an expert is needed for consultation, because it is not only your business reputation on the line, but also because there are other privacy considerations and/or other possible legal implications to your actions. On that note, one reason experts do not encourage providers to fight back online, with a public debate regarding the care rendered, is because such may constitute a violation of HIPAA laws. Although a patient may air their dirty laundry online — a physician should err on the side of protecting the patient’s confidentiality — and not giving a public acknowledgment that a patient/physician relationship exists.

For these reasons, it is advised that you enlist the support of an expert, to ensure that you do not further make matters worse by responding in such a way that could open yourself up to additional exposure.

**Conclusion**

Be aware of your online reputation. To ignore it, may result in negative postings and/or negative consequences to the success of your practice. There are things you can do to optimize your positive postings and/or highlight the positive reviews, such that the negative reviews become less consequence. Moreover, in the instance where additional action must be taken, there are resources available to either promote and/or improve your online reputation, as well as legal options to challenge the statements. Although legal options may be difficult to pursue, each set of case facts is different, and each circumstance warrants an independent analysis as to whether you have good standing to pursue a potential claim.

Should you have any questions regarding the management of your online reputation and/or responding to negative postings, please contact: David Valent, dvalent@reminger.com, a Healthcare Law Attorney, at Reminger Co., L.P.A.