

# **Social Media Risks**

**Shari Moore, RN, BSN**

**Vice-president, Risk Solutions**

**PLICO/a MedPro Group Berkshire Hathaway company**

# Disclosure

MedPro Group receives no commercial support from any ineligible company/commercial interest.

It is the policy of MedPro Group to require that all parties in a position to influence the content of this activity disclose the existence of any relevant financial relationship with any ineligible company/commercial interest.

When there are relevant financial relationships mitigation steps are taken. Additionally, the individual(s) will be listed by name, along with the name of the commercial interest with which the person has a relationship and the nature of the relationship.

Today's faculty, as well as CE planners, content developers, reviewers, editors, and Risk Solutions staff at MedPro Group, have reported that they have no relevant financial relationships with any commercial interests.

# Objectives

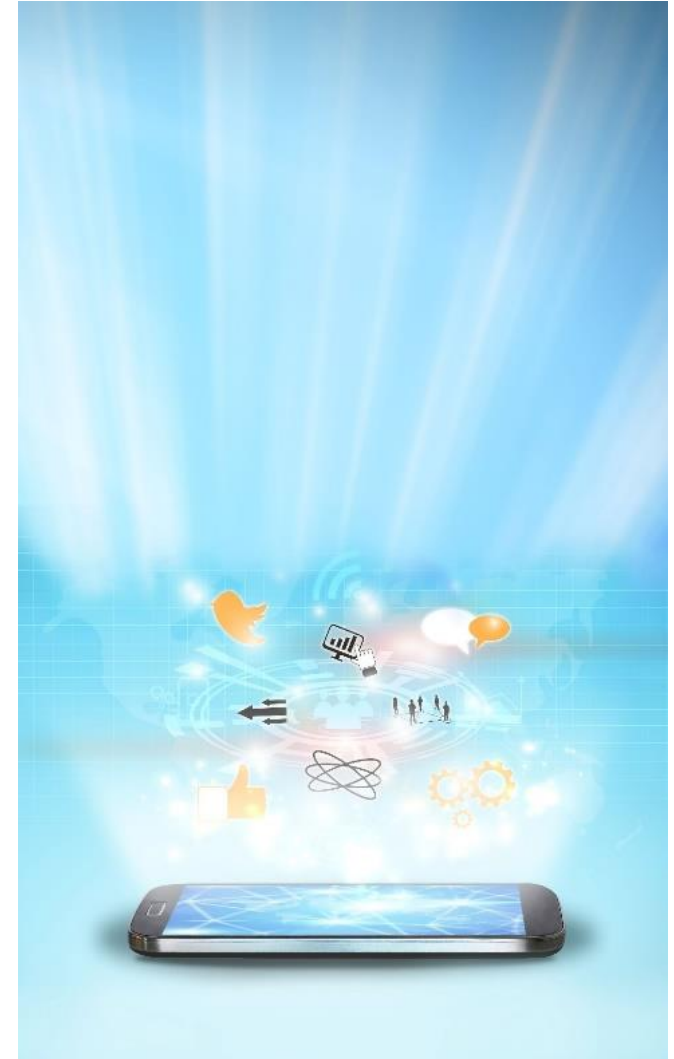


At the end of this program, participants should be able to:

- Examine the types of social media devices and formats
- Describe how social media is used by healthcare professionals
- Discuss the regulatory provisions and professional guidelines impacting social media use
- Demonstrate the various risks of using social media
- Explore strategies to mitigate risks for social media use

# What is social media?

- Social media is commonly understood to be an interactive, web-based application (program and data storage) that is used to share content.
- Commonly conveyed through pictures and videos with commentary.
- Common platforms



# Devices



Computers



Tablets/Pads



Smartphones



Smartwatches

# Do you use social media for professional purposes?

Are you using social media?

Which sites or portals do you use?

How often do you access social media?

For what purposes do you use social media?

# What social media platforms do you use?

Facebook

Instagram

You Tube

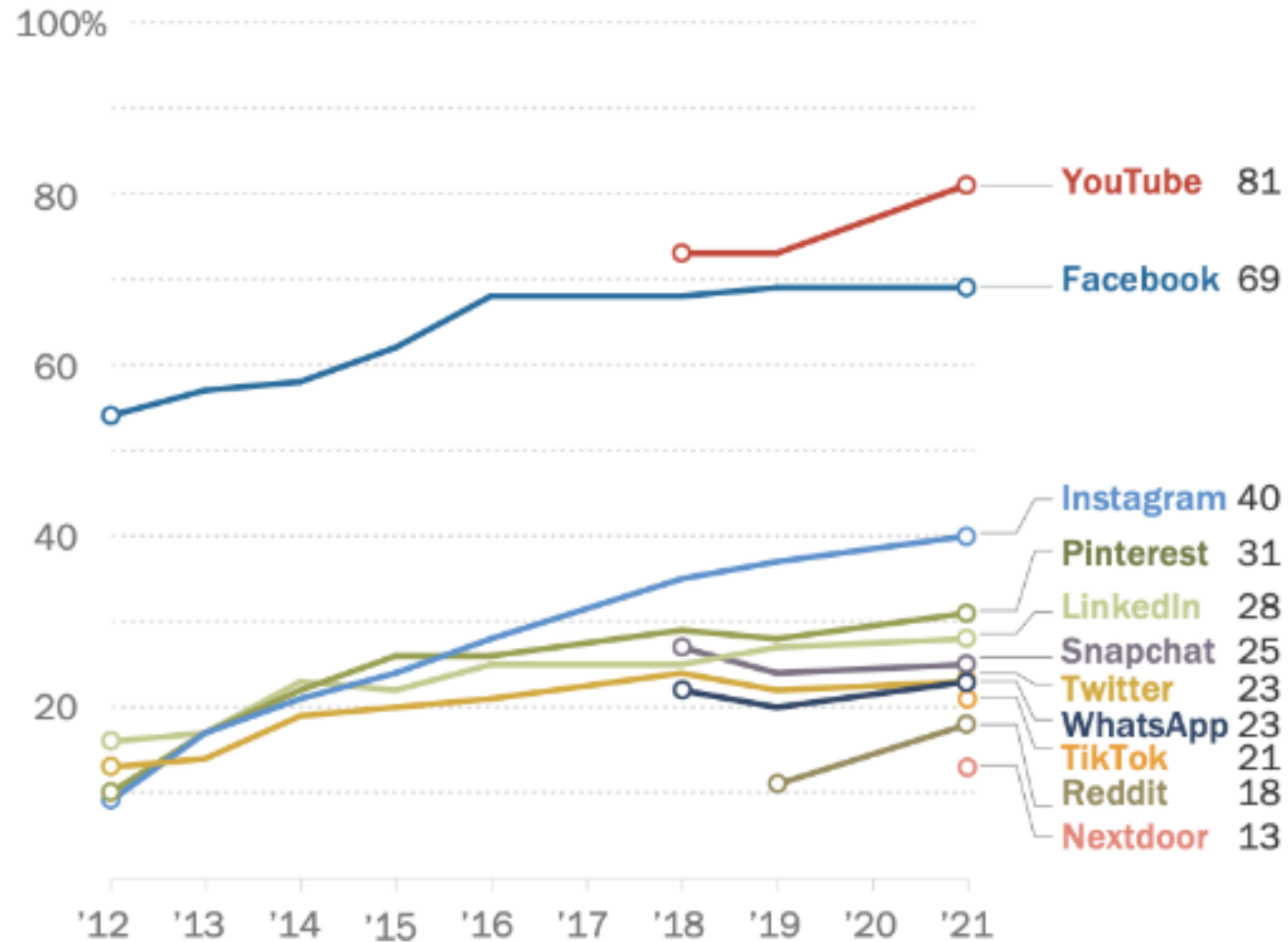
Linked In

Tik Tok

Snapchat

X-formerly known as Twitter

# Prevalence of social media use





# Unfriended...



CartoonStock.com

# Different way of communicating

---

Before the digital age and social media, thoughts and ideas were commonly conveyed through written materials. Written materials provided a certain amount of anonymity as the readers would need to visualize the object of that material in their mind's eye.

---

With the invention of the printing press, the photograph, and moving pictures, images could be spread to many more people. Yet it was still limited based on circulation of the publication or film, which was generally locally, then regionally, and some nationally and internationally.



# Welcome to the digital age!

---

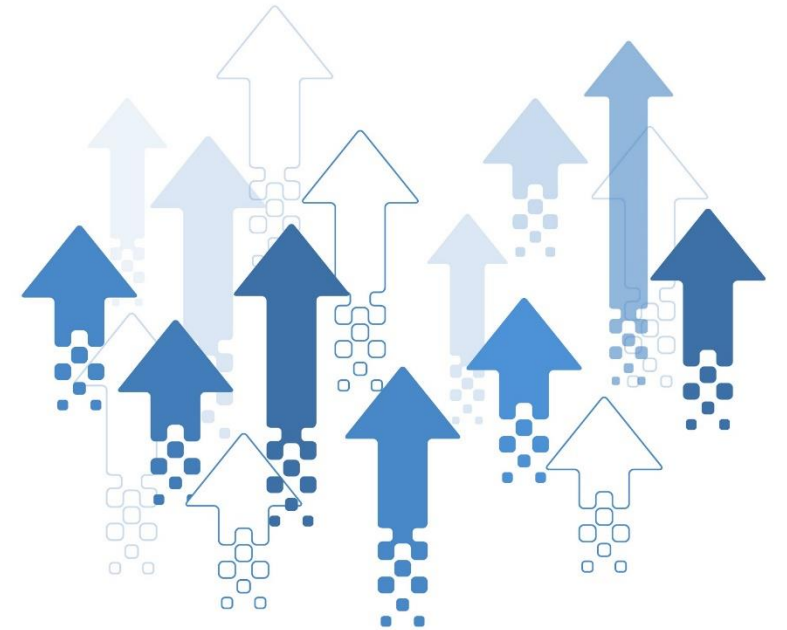
With the creation of the internet (world wide web), anyone connected could share content and there were no restrictions on what could be uploaded. It would take the law some time to catch up with what was possible, what should be, and what should not be uploaded to the internet. But still, computers and internet access were beyond the means of many.

---

With the release of the smartphone, it put the power of the internet into the hands of a great number of people.

---

According to [bankmycell.com](https://www.bankmycell.com), there are 6.64 billion smartphones in the world as of May 2022.



# Welcome to the digital age!

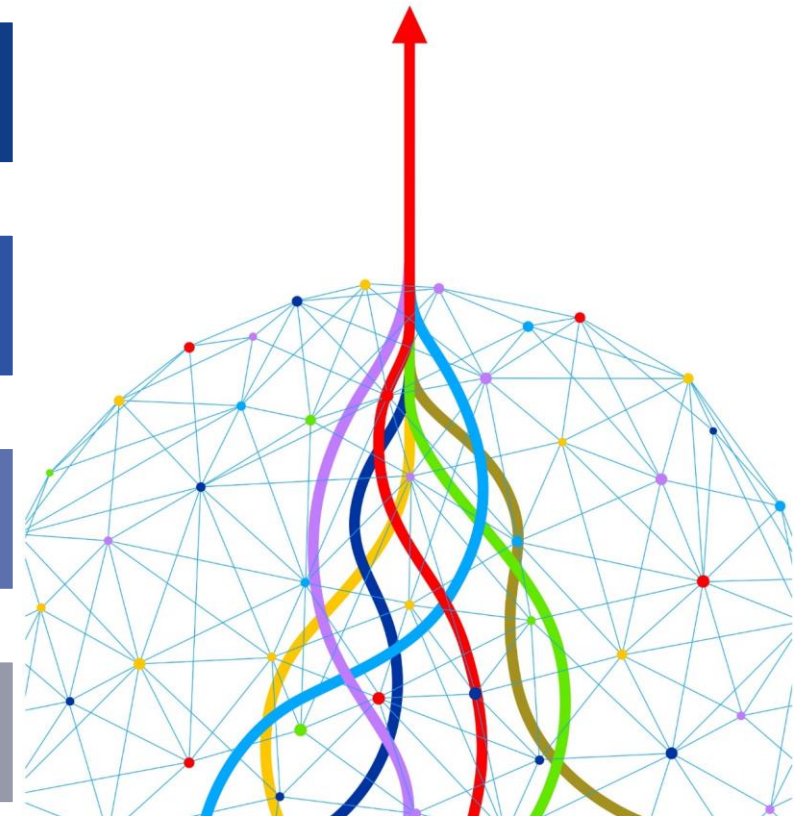
According to the census.gov world population clock, in May 2022 there were 7.8 billion people in the world.

This would indicate a majority of the world's population has a smartphone!

As more satellite internet providers emerge online, soon there will be no place on the planet without internet service!

Anything you post today, good or bad, potentially could reach more than 6 billion people.

Once it is out, you can't take it back. Yes, you can delete posts, but copies are made all along the internet path.



# Consumers increasingly rely on social media

- **42%** of individuals viewing health information on social media look at health-related consumer reviews.
- **74%** of internet users engage on social media. **80%** of those internet users are specifically looking for health information, and nearly half are searching for information about a specific doctor or health professional.
- **27%** of patients comment or post status updates based on health-related experiences.
- **43%** of baby boomers are starting to leverage social media for healthcare-related information.
- 18 to 24 year olds are more than **2x** as likely than 45 to 54 year olds to use social media for health-related discussions.
- **30%** of adults are likely to share information about their health on social media sites with other patients, **47%** with doctors, **43%** with hospitals, **38%** with a health insurance company and **32%** with a drug company.

# Benefits of social media

- Quick dissemination of information about services & products
- Contemporary marketing medium for efficient & cost effective advertising
- Mechanism for reaching a broad population
- Development of personal support and information sharing groups

# Patients/general public

Healthcare information

Services

Providers

Support groups

Screening events

Alerts

Fitness and diet

Self-test monitoring

Communication



# Providers

Communication

Documentation

Clinical reference

Advertising

Patient education

Monitor

Prescribe

Consult





# Facilities

Advertising

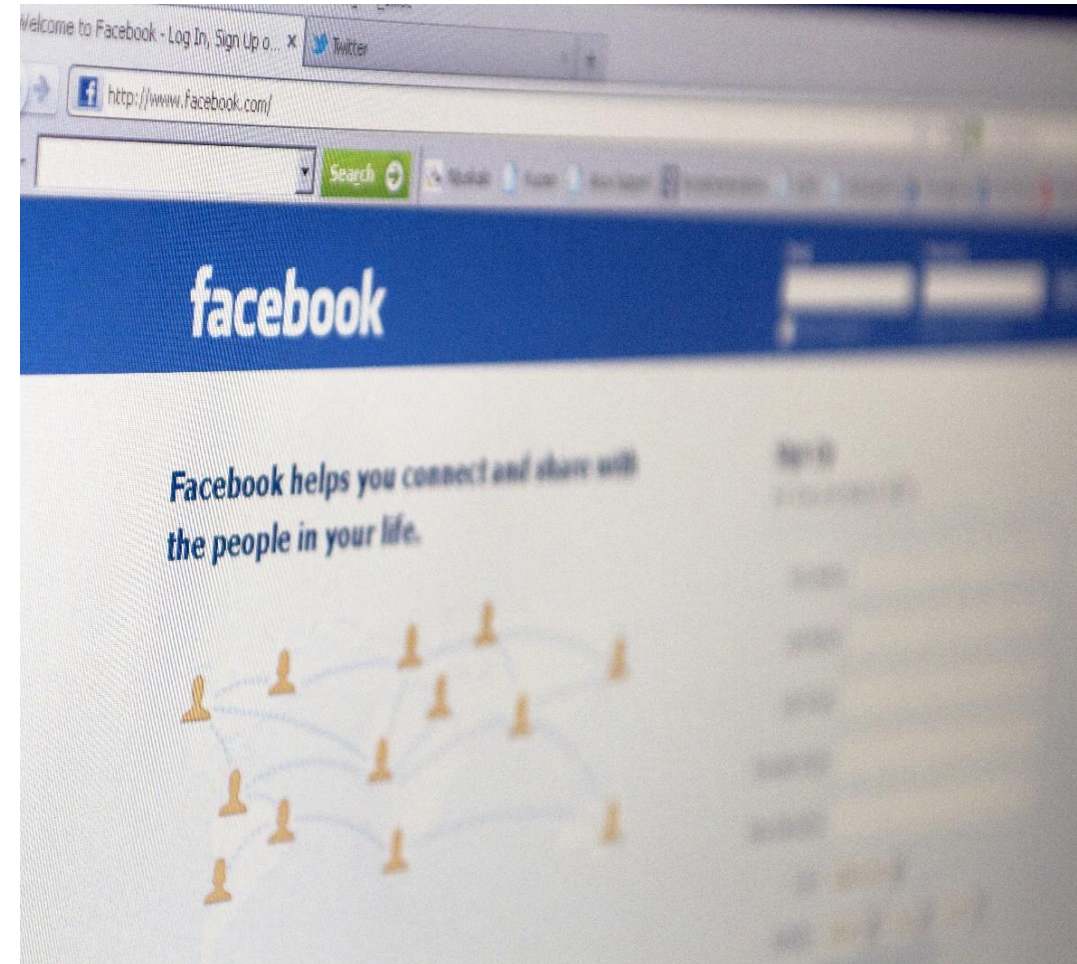
Communication

Healthcare alerts

Screening events

Community outreach

Find a provider

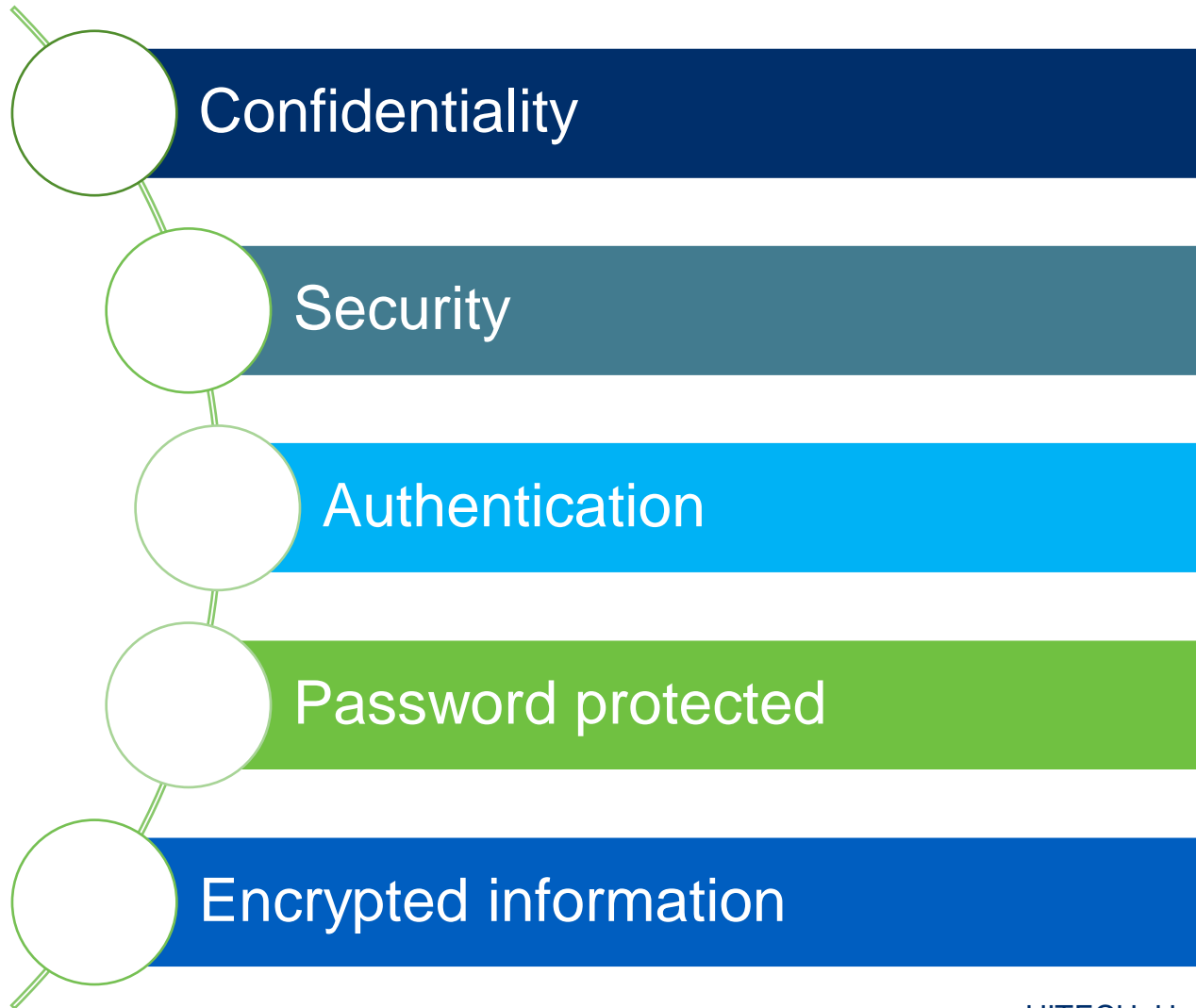


# Risks of social media

- HIPAA privacy and security



# HIPAA/HITECH compliance



HITECH: Health Information Technology for Economic and Clinical Health

# HIPAA covered entity vs. individual



When a HIPAA-covered entity or business associate violates HIPAA Rules, civil penalties can be imposed. When healthcare professionals violate HIPAA, it is usually their employer that receives the penalty, but not always. If healthcare professionals knowingly obtain or use protected health information for reasons that are not permitted by the HIPAA Privacy Rule, they may be found to be criminally liable for the HIPAA violation under the criminal enforcement provision of the Administrative Simplification subtitle of HIPAA.



# Unintended HIPAA violation

- Hospice nurse - one of her patients posted on a hospital-sponsored communication page to keep family and friends updated on her battle with cancer. One day, patient posted about her problems with depression. The nurse, in an attempt to be supportive, posted “I know the last week has been tough! Hopefully the new happy pill will help, along with the increased dose of morphine. I’ll see you on Wednesday”. The site automatically listed the user’s name with each comment. The next day, nurse was shopping at the grocery store when a friend asked her about Maria’s (the patient’s) condition. “I saw your post yesterday. I didn’t know you were taking care of her. I hope that new med helps with her pain.”
- An LPN took photos on his personal cell phone of a patient who was a resident at the group home in which he worked. Before he took the resident’s photo, he asked permission from the resident’s brother, because she was unable to give consent because of her medical and physical condition. That evening, the LPN ran into another nurse who had previously worked at the group home. While catching up, he showed the fellow nurse the patient’s photo, and they discussed her condition.

# Consequences of confidentiality breaches

---

Employers take HIPAA violations seriously as the risks to the organization are great and many.

---

Personally and individually, the risks for healthcare providers are significant. We have already seen nurses being fired by their employer for HIPAA violations. Healthcare providers can also be fined between \$100 and \$50,000.

---

Criminal charges brought by the state attorney general can end in fines and jail time.

---

For the licensed healthcare professional, board action taken against one's license for HIPAA violations can be a life-changing mistake. One's license can be suspended or revoked.

---

A civil lawsuit for breach of confidentiality can be brought against them.

---



# Risks of social media

- HIPAA privacy and security
- Professional/personal boundaries



# Healthcare professionals and social media

- Medicine is not just another profession.
- Medicine is a public facing profession.
- Medicine is held in the public trust.
- Your private lives will be scrutinized to a much greater degree than other professionals.
- Your state practice act is essentially a state law that governs the practice of medicine. It generally includes either a code of conduct or guidelines related to profession conduct.
  - These conduct guidelines apply not only when you are “on-the-clock,” but also every moment of your licensed life.
- Recruiters will use their impression of your social media activity in their decision-making.





# The danger of social media for healthcare professionals

Sandra Canosa put it very succinctly in her article,  
**The Danger of Social Media for Healthcare Professionals**

“Social media is just that: social. It’s meant as a public forum, and it needs to be treated like one. Workers in the medical industry need to be especially careful about how they discuss work-related issues online and should be aware of how their actions might reflect their ability to inspire trust in a general public that requires dependable, quality care.”



# Federation of State Medical Boards

## Social Media and Electronic Communications in Medical Practice policy – Adopted April 2019

1. Evaluating current and emerging social media and electronic platforms for communication between practitioners and practitioners with patients, as well as communication in educational settings (students and residents), including blogs, twitter, websites, email, electronic health record patient portals, and others,
2. Reviewing current state medical board actions and concerns regarding social media, electronic communication, and professional conduct, and
3. Reviewing the FSMB 2012 policy, “Model Guidelines for the Appropriate Use of Social Media and Social Networking,” and revise, amend or replace with updated recommendations for best practice in the professional use of electronic and social media communication



# Licensing boards

## Guidelines for professional use of social media

- Protect the privacy and confidentiality of patients
- Avoid requests for online clinical advice
- Act with professionalism
- Be forthcoming with employment, credentials, and conflicts of interest
- Be aware that information posted online may be available to anyone and may be misconstrued
- Maintain separate accounts for personal versus professional use
- Beware of online patient relationships

# Patient hides recording device in her hair to record surgery

## Woman records hospital staff making disparaging remarks about her during surgery

by theGrio | March 29, 2016 at 6:03 PM Filed in: News



# Work/life integration

- Prevalence of personal electronic devices (PEDs)
- Blurring lines of work life versus private life
- Do you have separate accounts?
  - Email
  - Text
  - Social media
- While you are working, do you check:
  - Emails – personal as well as professional?
  - Texts – personal as well as professional?
  - Social media websites?



# Risks of social media

- HIPAA privacy and security
- Professional/personal boundaries
- Failure to assign a website administrator



# Risks & strategies of social media

- Limited number of website administrators
- Scheduled site review and monitoring
- Routinely update content
- FTC considerations
  - Information truthful and non-deceptive?
  - Evidence to back up claims?
  - Fair, nonbiased content?

# Case study: patient posts photo on Facebook, but regrets it

---

Dr. A, a board-certified plastic surgeon, performed a successful breast augmentation on a patient in her mid-thirties. Approximately 5 months after the procedure, the patient sent an email message to Dr. A's practice expressing that she was extremely pleased with the results of the augmentation. In the message, she attached a picture of herself that highlighted the results of the surgery.

---

In response, Dr. A's marketing manager asked the patient for permission to post the picture on Facebook. The patient consented via email to the posting and asked the marketing manager to tag her on the image.

---

Approximately 1–2 hours after the picture was posted, the patient contacted Dr. A's office and asked that they remove her picture from Facebook because people were posting critical comments about it.

---

The picture was immediately removed, but the patient's attorney sent a demand letter shortly thereafter. Allegations included violation of the patient's privacy rights, negligence, breach of fiduciary duty, breach of contract, and infliction of emotional distress.

---

Although it was determined that the patient's case was weak, the authorization she sent to Dr. A's office via email message did not include all of the elements required by HIPAA. To avoid the patient filing a complaint with the Office for Civil Rights, Dr. A agreed to settle the case.



# Risks of social media

- HIPAA privacy and security
- Professional/personal boundaries
- Failure to assign a website administrator
- Negative online reviews



**Have you ever had a negative online review?**

**Yes**

**No**

# Managing online reviews – options to consider

- Do nothing.
- Remove or ask the webmaster to remove the post.
- Do NOT engage in an online debate!
- Respond with script language to indicate you are committed to providing excellent patient care and encourage anyone with concerns to contact your office directly.



**The solution to pollution is dilution.**

# Managing online reviews

## Compliments:

“Thanks for the kind words! We’re really proud of our staff, and glad to hear that you had a good experience.”

## Complaints:

“We strive to give the best care to our patients and are always disappointed to hear of issues with anyone’s experience”.

“We’re sorry to hear that you’re having trouble with billing, and we would like to work with you to resolve the problem. Please get in touch with us at (phone number) so that we can help.”

# Negative reviews on the internet

- **Factual Background and Covered Conduct.** On November 18, 2020, HHS notified Manasa of HHS' investigation regarding Manasa's noncompliance with the HIPAA Privacy Rule. HHS's investigation indicated that the following conduct occurred ("Covered Conduct"):
  - Manasa impermissibly disclosed the PHI of four (4) patients in response to their negative reviews posted on Google Reviews. See 45 C.F.R. § 164.502(a).
  - Manasa failed to implement policies and procedures with respect to PHI that are designed to comply with the standards, implementation specifications, or other requirements of the Privacy and Breach Notification Rules in violation of 45 C.F.R. § 164.530(i)
- **Penalty Terms & conditions**
  - Financial penalty-\$30,000.00
  - Corrective action plan-Policies/procedures
  - Notice to patients-If information was breached
  - Monitoring by OCR for 2 years

# Risks of social media

- HIPAA privacy and security
- Professional/personal boundaries
- Failure to assign a website administrator
- Negative online reviews
- Text messaging



**Have you ever sent a text message about a patient?**

Yes

No

# Challenges of standard text messaging

Standard text messaging is not secure

- Short message service (SMS)

Does not comply with HIPAA

Practice has no control over personal devices

Unable to audit compliance with privacy regulations

If lost, there is no way to wipe protected health information from the devices or lock them remotely



# Case study: physician's tweets prove costly

---

A state medical board received a complaint that an internal medicine physician in a small town was tweeting about specific patients without their knowledge or consent over a 12-month period.

---

The medical board initiated an investigation into whether the physician's actions constituted (a) a breach of doctor–patient confidentiality (b) a violation of laws connected with practice, and/or (c) unprofessional conduct.

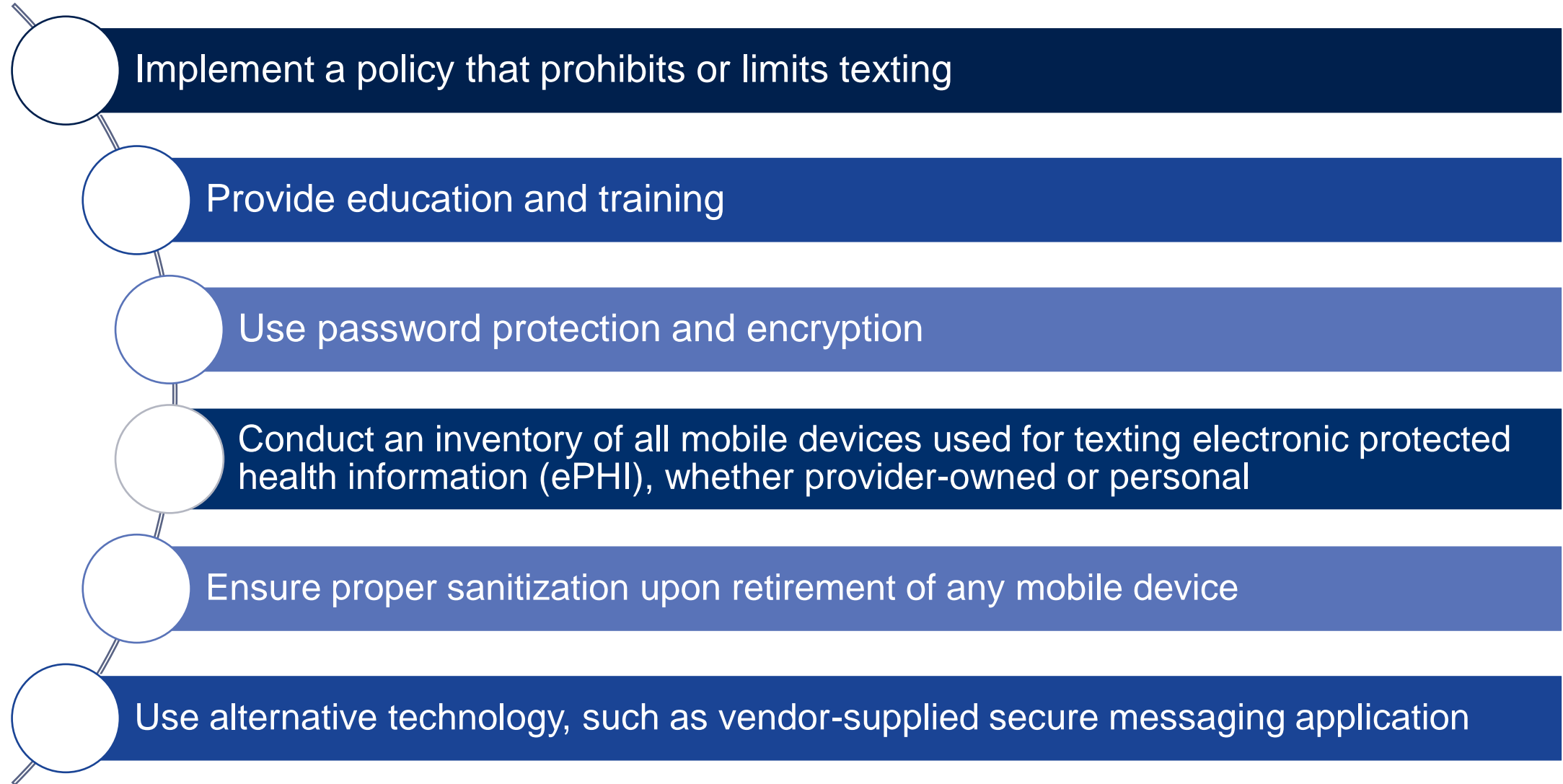
---

The physician did not dispute that he tweeted about his patients; however, he argued that the tweets did not include any identifiable information. Some of the tweets included comments about the physician's interactions with patients, pictures of X-rays, and cropped images of notes from undefined individuals.

---

Nonetheless, the medical board initiated a formal investigation into the matter and the physician was required to submit a further response. Eventually, the medical board dismissed the matter because it was not able to prove that a violation occurred. However, the physician had significant expenses related to legal fees.

# Risk management strategies for texting



# Risks of social media

- HIPAA privacy and security
- Professional/personal boundaries
- Failure to assign a website administrator
- Negative online reviews
- Text messaging
- Distracted doctoring



# Distracted doctoring



# Distracted doctoring



*“Distracted Doctoring” – updating your Facebook status in the O.R.*

## **Dallas Anesthesiologist Being Sued Over Deadly Surgery Admits to Texting, Reading iPad During Procedures**

BY ERIC NICHOLSON

TUESDAY, APRIL 1, 2014 AT 9:08 A.M.

# Distracted doctoring



**A doctor in Sacramento, California joined a traffic court hearing on Zoom while performing surgery on a patient.**

# Distracted doctoring

Medicine is a vocation of focused attention. To be a good physician, an ability to selectively identify key information is essential. Patients must be listened to and attended to, both for what they are saying and what they are choosing not to say. Generating a differential diagnosis means focusing on what is relevant and discarding what is not. Focused attention is increasingly difficult to promote in an age of electronic multitasking.

# Risks of social media

- HIPAA privacy and security
- Professional/personal boundaries
- Failure to assign a website administrator
- Negative online reviews
- Text messaging
- Distracted doctoring
- Legal action





# Social media and data privacy – the scope of the problem

According to an article on ITWeb, “Social media becomes biggest data breach threat.”

In the first half of 2018, “Social media incidents accounted for over 56% of the 4.5 billion data records compromised worldwide...”

“During the first six months of 2018, more than 25 million records were compromised or exposed every day, or 291 records every second, including medical, credit card and/or financial data or personally identifiable information.”

- “Healthcare continues to lead in number of incidents (27%), with the largest such incident, 211 LA County, exposing 3.5 million records through accidental loss.”

These statistics are specific to data breaches such as “lost, stolen, or compromised records.”

- Although these do include health records and protected health information (PHI), they also include other sources of personally identifiable information (PII).

# Failure to properly dispose of protected health information



## HealthReach Community Health Centers Reports Improper Disposal Incident Affecting Almost 117,000 Patients

POSTED BY HIPAA JOURNAL ON SEP 15, 2021

The protected health information (PHI) of 116,898 patients of Waterville, MA-based HealthReach Community Health Centers has been potentially compromised in a third-party data breach. HealthReach Community Health Centers, which operates 11 community health centers in Central and Western Maine, discovered a worker at a third-party data storage facility had improperly disposed of hard drives that contained the data of patients. Under HIPAA, all electronic devices that contain PHI must be disposed of in a manner that ensures data on the devices cannot be read or reconstructed. This typically involves clearing (using software or hardware products to overwrite media with non-sensitive data), purging (degaussing or exposing the media to a strong magnetic field), or destroying the media via disintegration, pulverization, melting, incineration, or shredding. In a data breach notice sent to the Maine Attorney General, HealthReach said patient data had been exposed on April 7 and it was notified about the improper disposal incident on May 7. Upon discovery of the incident, HealthReach...

## OKLAHOMA

# Integrus warns patients of data breach

**Dale Denwalt**

The Oklahoman  
USA TODAY NETWORK

Some patients who have records on file with Integrus Health were apparently contacted last week by someone claiming to have stolen their personal information from the hospital and threatening to post it on the dark web.

An email shared on social media, allegedly from the supposed hackers, says attackers got names, contact information, work and insurance information, plus Social Security numbers.

The email suggests they attempted to extort Integrus before reaching out to affected patients directly.

“We have contacted Integrus Health, but they refuse to resolve this issue,” the unknown sender wrote.

The emails threatened data breach victims by saying if they don’t pay \$50 worth of Bitcoin, their information will be sold to data brokers who operate on the dark web.

Integrus issued its own notice over the Christmas weekend to patients it knows were affected by the data breach. The data breach apparently did not in-

**“Integrus Health initiated a review of the potentially accessed data to determine the type of information and to whom it related, which is currently underway.”**

### Statement on Integrus Health website

clude payment information, passwords or other government-issued identification. Not every Integrus patient received the notice, and some victims posted online that some of the details were out of date.

The hospital warned that if you received an email like this from the hacker, do not click any links or interact with them.

**See DATA BREACH, Page 6A**

# Potential liability actions

## Civil actions:

- Breach of confidentiality
- Invasion of privacy
- Negligence



# Potential liability actions

Online malpractice

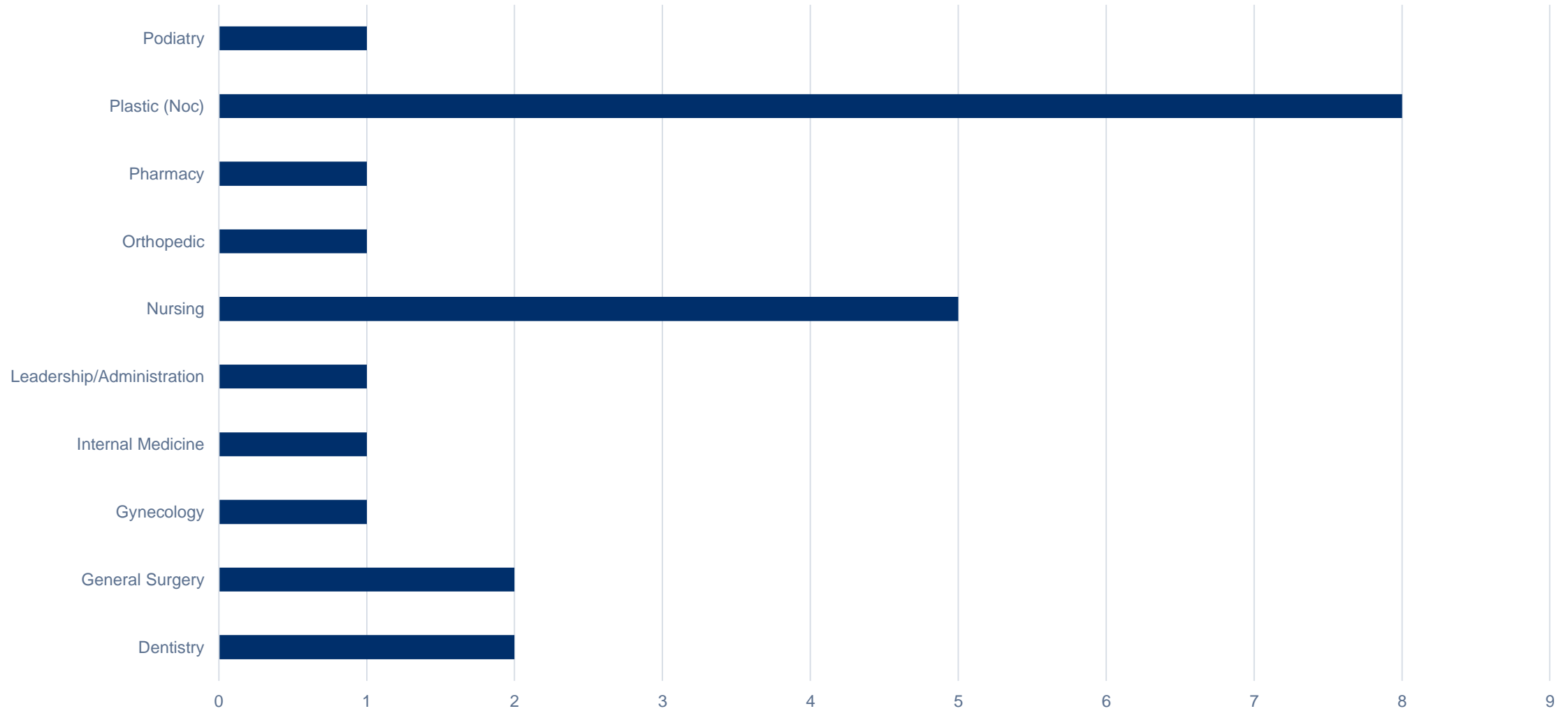
Extension of patient–provider relationship onto the internet

Potential or inadvertent creation of patient–provider relationships

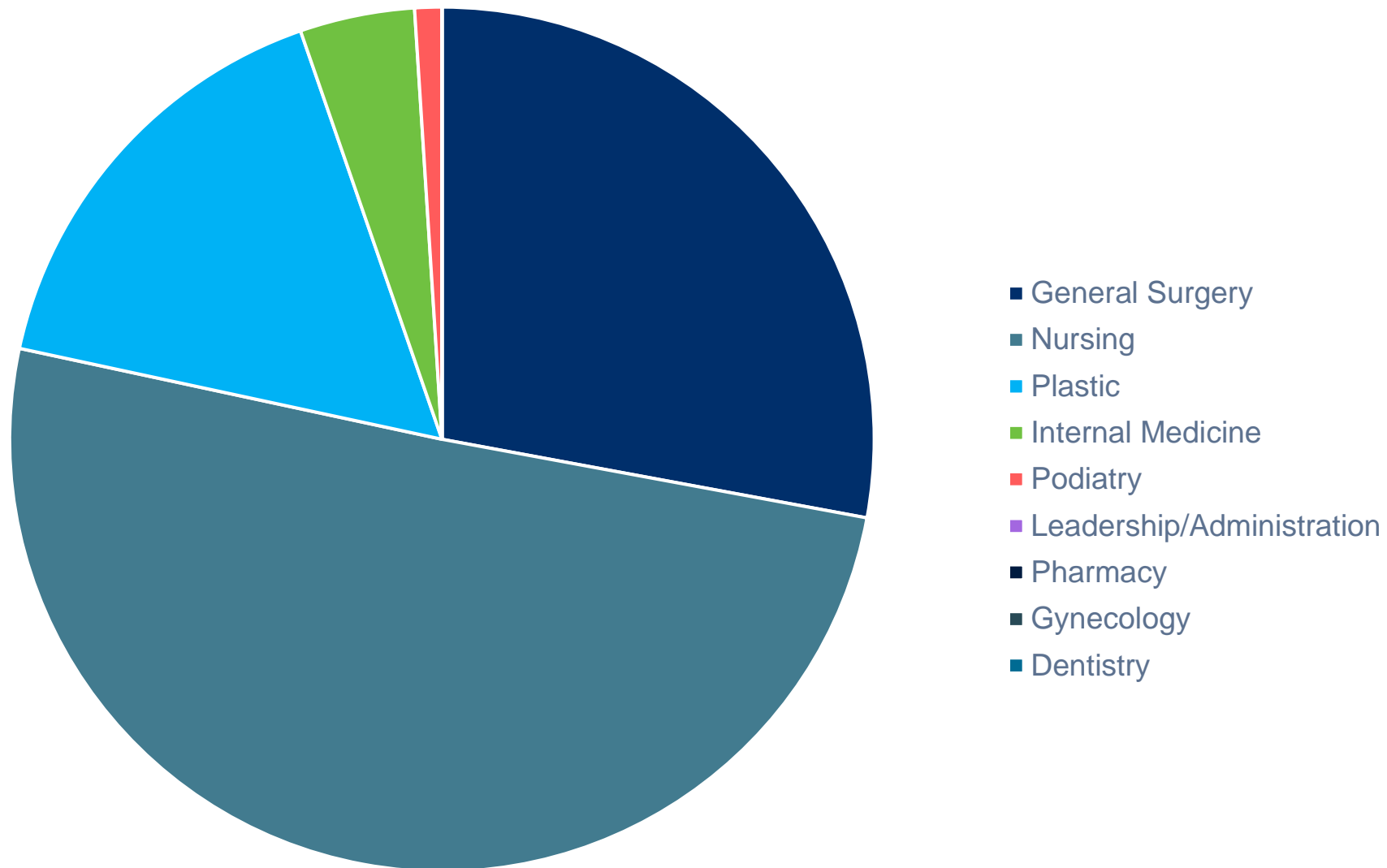


# MedPro Claims

Count of Major Allegation by Primary Responsible Service



# Indemnity paid



# Strategies for success

- Uphold HIPAA privacy and security standards on social media as you would in all other forms of communication
- Establish appropriate professional/personal boundaries in use of social media
- Identify a website administrator
- Carefully consider your social media strategy
- Routinely monitor your social media sites for accuracy
- Consider your response to negative online reviews
- Include standard disclaimers against interpreting information as medical advice
- Obtain appropriate, detailed and written informed consent before using patient photos or testimonials for marketing or advertising purposes
- Institute social media policies
- Provide initial and ongoing staff training
- Include patient education about use of social media and digital platforms



# Social media policy considerations

- Outline acceptable and unacceptable uses of the practice's social media account and the discussion of workplace/employment issues on the staff member's personal accounts.
- Define parameters for employees accessing social media and online content (non-work related) during business hours.
- Balance employees' rights under Section 7 of the National Labor Relations Act and an employer's rights and duties to protect patients' protected health information (PHI) and confidential business information
- Delineate guidelines for use of texting re: PHI, orders and other patient related data
- Outline use of personal PEDs for professional communication
- Don't assume your staff shares your "values" in regards to social media.
- Monitor for potential abuses
- Include corrective action process



# Restrictions and appropriate internet use to consider

Does your organization's network prohibit access to inappropriate websites?



Does your organization have a policy that specifies appropriate and inappropriate internet use?



Does your organization's policy permit internet use during nonworking hours (e.g., lunch and breaks) on facility-owned devices?

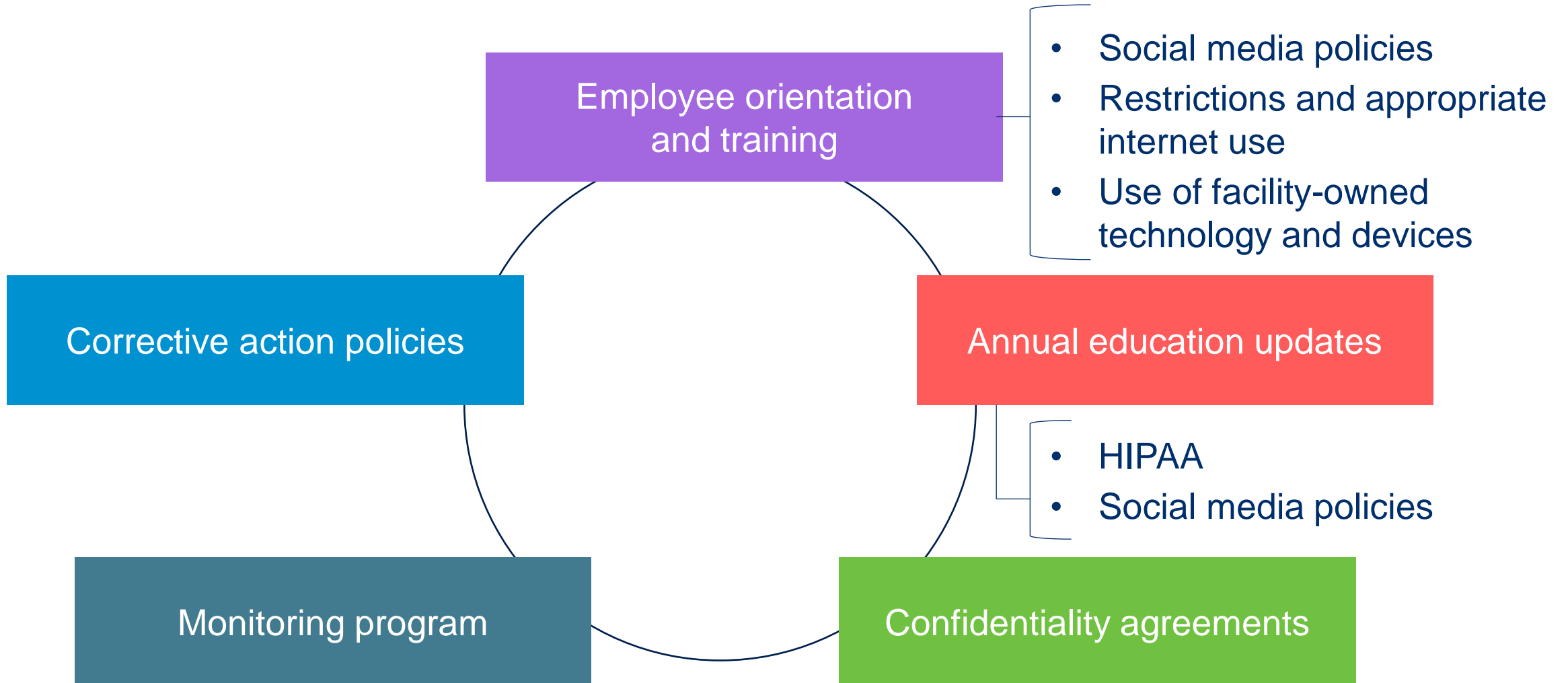


Does your organization's policy identify prohibited sites or uses (shopping sites, dating sites, etc.)?



Does your organization consistently enforce its policy with all staff?

# Risk strategies for staff education and training



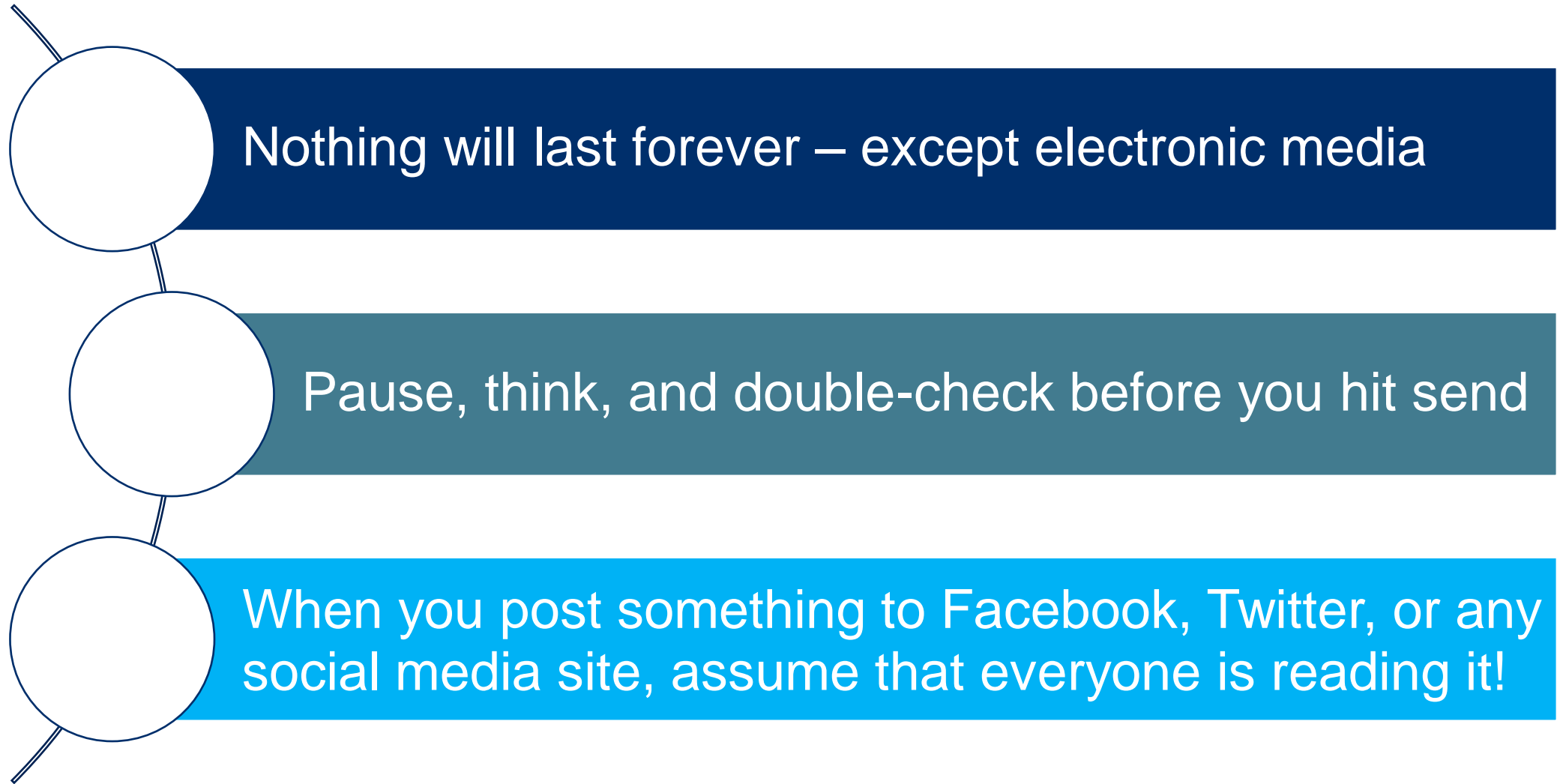
# Electronic communication consent form

- Types of services and information that are suitable for electronic interactions (e.g., nonemergent questions/concerns, prescription refills, appointment requests, etc.)
- Criteria for establishing a provider–patient relationship
- Notice of whether the electronic communications are encrypted
- A statement notifying patients to contact emergency medical services if they are experiencing an urgent problem
- The general turnaround time for responding to electronic communications
- The right of the healthcare provider to refuse to make conclusions or decisions regarding treatment based on information obtained electronically
- A separate and specific informed consent should be used when establishing the use of telehealth visits

# Summary

- Social media is integral in our day to day lives
- Consumers (patients) rely heavily on social media for information—including information re: their personal health
- Physicians have an obligation for professional online presence
- Social media policies provide structure for appropriate use by your staff
- Initial and annual staff training and education re: HIPAA and social media use/risks can enhance compliance
- Regularly monitor your online presence (e.g., website, social media accounts, etc.) and develop a framework for managing negative reviews

## Last words



The background of the slide is a high-contrast, black and white photograph of a rugged rock face with various cracks and textures. The word "EXPLORE" is written in large, white, sans-serif capital letters across the center. The letter 'X' is stylized with blue diagonal lines crossing through it.

# EXPLORE

HEALTHCARE SUMMIT 2024

AUGUST 22-23  
OAFP AUG 24

NORMAN, OK  
EMBASSY SUITES HOTEL & CONF CENTER

# Thank you

Shari Moore, RN, BSN  
Vice-president, Risk Solutions  
PLICO/a MedPro Group Berkshire Hathaway Company



# Disclaimer

The information contained herein and presented by the speaker is based on sources believed to be accurate at the time they were referenced. The speaker has made a reasonable effort to ensure the accuracy of the information presented; however, no warranty or representation is made as to such accuracy. The speaker is not engaged in rendering legal or other professional services. The information contained herein does not constitute legal or medical advice and should not be construed as rules or establishing a standard of care. Because the facts applicable to your situation may vary, or the laws applicable in your jurisdiction may differ, if legal advice or other expert legal assistance is required, the services of an attorney or other competent legal professional should be sought.