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*2017
Southwest Conference*

Section C

*Reach Out and Shrink Someone:
Technology and Ethics*

4:45

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Bibliography at end of Section C

C - 2

HIPAA
SKYPE
FaceTime
iMessage
Text Messaging

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Social Networking Definition
Kang, 2015, p, 4

“Online social networking is the use of dedicated websites or application in order to interact with other people who also have those social networking sites.”

- *People have mutual interests*
- *Sharing and receiving information*
- *Basis of a society that was always possible in person*
- *NOW: Social communication without being in person*

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A Checklist For Avoiding HIPAA Violations On Social Media



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Law360.com

Avoiding HIPAA Violations when Social Networking

- ***Keep personal and professional media separate***
- ***Avoid “friending” patients and clients (more later)***
- ***Deleted posts exist forever***
- ***Personal page can be accessed by anyone***

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Law360.com

Avoiding HIPAA Violations when Social Networking

- *Patient may post every last detail about his or her treatments*
- *Professional or staff may NOT post*
- *Hide all files and photos during online office events*
- *Breaches by fellow employees must be reported*
 - *Whistleblowing... very difficult*

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HIPAA Myths *Opensesame.com*

Myth #1: Discussing patients without names is okay

Example One

In 2010, five nurses were fired from a medical center in California for discussing patients on Facebook. The hospital claims no identifying information, such as patient names or photos, were included in the posts, but fired the employees anyway.

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*HIPAA and Social Media Collide
Opensesame.com*

Myth #1: Discussing patients without names is okay

Example Two

A nurse in Michigan was fired for an angry update on Facebook about an alleged cop-killer (unnamed in her post) who was a patient at her hospital. Due to the news coverage, the hospital felt that it was clear whom the nurse was discussing.

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*HIPAA and Social Media
Harris & Kurpius, 2014*

Myth #1: Discussing patients without names is okay

Example Three LEGAL CASE: Doe vs Green

- *Paramedic disclosed details of rape victim on his social media*
- *He thought it was alright because he did not use patient's name*
- *Survivor felt she was identified and filed civil suit*
- *Survivor won law suit*

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*HIPAA and Social Media Collide
Opensesame.com*

*Myth #2: Pictures at work are okay as long as they
aren't of patients*

Example Four nursing students in Kansas were expelled from their program for posting pictures of themselves on Facebook with a human placenta. The students contend they were informed their post would not be a violation of privacy, but were expelled for their "lack of professional behavior."

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*HIPAA and Social Media Collide
Opensesame.com*

Myth #3: Public figures don't have the same protections

Example An employee at a medical center in Mississippi resigned from her job due to a privacy violating tweet. The employee responded to a tweet from Governor Haley Barbour concerning trimming expenses from the budget with a remark regarding the governor's private, after-hours appointment several years prior. Though the governor is a public figure, his medical history, including all PHI, is protected under HIPAA.

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Skype and HIPAA
APA, 2015

HIPAA Laws

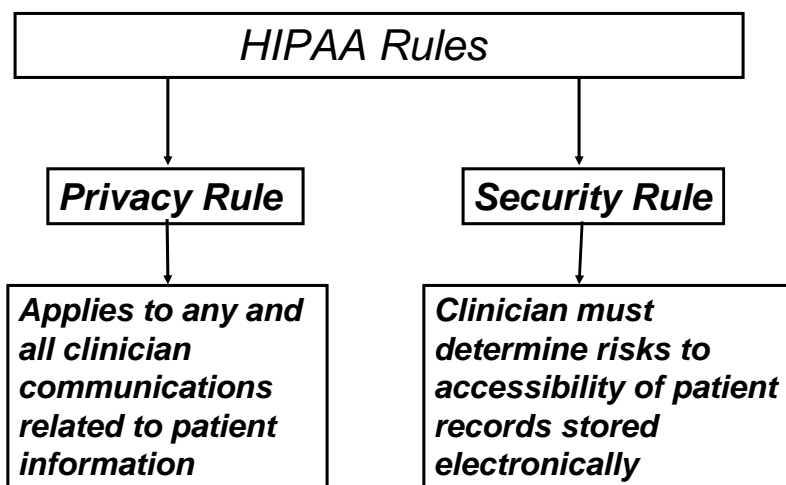
- *Requirement for assessment of technology risk*
- *All communications must be encrypted*

Questions:

- *Is SKYPE and encrypted technology?*
- *Is FaceTime encrypted technology?*

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HIPAA Rules
Knapp et al., 2013



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SKYPE and HIPAA
Greevy, 2015

IN TRANSIT

Skype meets HIPAA security requirements while in transit. Skype provides encryption for messages between client and chat service used.

CLOUD STORAGE

Skype cannot meet HIPAA security requirements in cloud storage. Skype does not explicitly state they provide “at rest” encryption.

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Skype and HIPAA
www.cloudvisittm.com

SKYPE and HIPAA (1)

- *Microsoft owns SKYPE*
- *HIPAA requires Business Associates Agreement (BAA)*
 - *Agreement between therapist (provider) and company responsible for the online technology*
 - *BAA must guarantee HIPAA compliance*

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Skype and HIPAA
www.cloudvisittm.com

SKYPE and HIPAA (2)

- *Microsoft's BAA explicitly **omits SKYPE***

*Conclusion: In absence of BAA Skype
is not HIPAA compliant*

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SKYPE and HIPAA
Greevy, 2015

*“SKYPE has not applied yet for a HIPAA compliance
review for any of it's clients or even the whole
system.”*

Conclusion: SKYPE is NOT HIPAA Compliant

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*Text Messaging and HIPAA
Kangas, 2016*

HIPAA Unambiguously States (1)

- *Sending health information in text message is a HIPAA violation*
 - *Unless its to a patient with proper consent form*
 - *Applies to messages as simple as appointment reminders*

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*Text Messaging and HIPAA
Kangas, 2016*

HIPAA Unambiguously States (2)

- *Engaging in texts without documenting context, consideration, and patient consent can trigger \$50,000 fine for each text message*

Conclusion: *TEXT Messaging is not HIPAA compliant*

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FaceTime and HIPAA

www.linkedin.com/pulse/facetime-hipaa-compliant-jon-taylor



Jon Taylor, May 20, 2015

*Apple IT Solutions Expert | Author of
Hassle Free Apple IT Support for
Business | Founder & President*

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FaceTime and HIPAA

FaceTime is HIPAA compliant...

However....

- *Because **video** is involved, there are many mistakes that could be made that would make FaceTime non-compliant*

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FaceTime and HIPAA

FaceTime is HIPAA Compliant

- *Audio/video contents of FaceTime calls are protected by end-to-end encryption*
- *No one but sender and receiver have access*
- *Apple cannot decrypt the data*

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FaceTime and HIPAA

FaceTime is HIPAA compliant... however....

- *Caution related to medical charts of other patients in plain view during the chat*
- *Could see patients in a waiting room*
- *If some other device is recording, it would then be considered ePHI*
- *Would then be subjected to HIPAA rules*

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FaceTime and HIPAA

FaceTime is HIPAA compliant... however....

- *Environment becomes very important when using FaceTime*
- *“Background Noise...”*
- *Awareness of your surroundings is critical*
- *Who is in the background of your video*

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iMessage and HIPAA *Kangas, 2016*

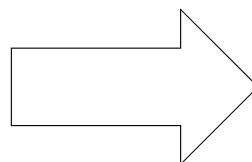
- *Apple product iMessages are encrypted*
 - *Which is a prerequisite for transmitting ePHI*
- *However, Apple is not HIPAA compliant*
- *Because Apple is not a “common carrier” like AT&T and Verizon, you need a **HIPAA Business Associate Agreement (BAA)** with them in order to send any ePHI over iMessage (consent or not).*

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Reputation Protection...

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*Social Networking Policy
Example: Keeley Kolmes, Ph.D.*



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Damaging Online Reviews
Psychotherapy Finances, 10/6/12

Vignette: Therapist Joan asks her risk management company this question:

“Terrible things have been posted about me by a former patient on a website called “Yelp.” I tried googling my name and this is the first thing that comes up about me. What can I do to stop this?”

Answer:

- *Strategies exist*
- *There is no complete remedy*

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Damaging Online Reviews
Psychotherapy Finances, 10/6/12

The “dreaded” Yelp.com

- *Yelp is a do-it-yourself Consumer Reports website or ONLINE HITMAN*
 - *People report their “experience”*
- *Yelp takes no responsibility for questionable posts*
- *Legally*
 - *They are not required to do so*

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*Damaging Online Reviews
Psychotherapy Finances, 10/6/12*

When Attorneys Contact Yelp

- *They may or may not respond*
- *Ohio Attorney Glennon Karr Reports:
“They (Yelp) more or less have complete immunity....and they are right. The law backs them up.” (p. 1)*
- *See 47 U.S.C. Section 230*
- *See Zeran v. America Online, Inc. 129 F.2d (4th Cir. 1997)*

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*Damaging Online Reviews
Psychotherapy Finances, 10/6/12*

Yelp’s response to attorney’s request for name of person who posted a negative review

*“Regarding your request for user information, please note we do not freely disclose such information. We will respond to a properly issued subpoena, but reserve the right to object as necessary given the situation.”
(p. 4)*

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Damaging Online Reviews
Psychotherapy Finances, 10/6/12

L.A. Attorney Christopher Zopatti:

“A lawsuit isn’t a good idea. It could cost you upwards of \$100,000 in legal fees to sue them, and most of the time, these people don’t have any money anyway.”
(p. 2)

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Damaging Online Reviews
Psychotherapy Finances, 10/6/12

David Ballard, Asst. Exec. Director for Marketing and Business Development at APA:

“An explicit response from a therapist would be acknowledging the therapeutic relationship.” (p. 2)

- *Could breach confidentiality*
- *May not disclose Yelp reviewer was ever a patient*

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Sum Up Question

All therapists who use electronic methods for billing and patient benefits inquiry are required to be HIPAA compliant.

ANSWER

True

False

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Sum Up Question

When should patient emails and texts be included in the patients record?

ANSWER:

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Sum Up Question

What should be done ethically prior to doing an internet search on one's patient?

ANSWER:

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Sum Up Question

- (a) Is Skype HIPAA compliant?*
- (b) If so, when is it compliant and when isn't it compliant?*

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Sum Up Question

- (a) *Is FaceTime HIPAA compliant?*
(b) *Name at least two primary concerns using FaceTime:*

ANSWER:

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Bibliography

- American Medical Association. (2011) Current procedural terminology, CA telemedicine and eHealth center (Downloaded 10/5/12: <http://www.caltrc.org/general-information/reimbursement-handbook>)*
- American Psychological Association (2012). Backgrounder on technology: APA Council of Representatives (Retrieved 10/4/12 <http://www.apapracticecentral.org/update/2011/03-31/reimbursement.aspx>)*

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Bibliography

*American Psychological Association. (March 12, 2011).
Reimbursement for telehealth services, Practice central,
downloaded Oct. 8, 2012
<http://www.apapracticecentral.org/update/2011/03-31/reimbursement.aspx?>*

*American Psychological Association. (2013). Guidelines for
practice of telepsychology, American Psychologist, 68(9), 791-800.*

*American Psychological Association. (April 24, 2014).
Practitioner Pointer: Does the use of Skype raise HIPAA
compliance issues? Legal affairs and regulatory affairs staff.
Downloaded 7/29/15*

www.apapracticecentral.org/update/2014/04-24/skype-hipaa.aspx

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Bibliography

*(AHRQ) Using Telehealth to Improve Quality and Safety
Findings from the AHRQ Health IT Portfolio (2008).
Downloaded 2/20/17*

*[https://healthit.ahrq.gov/sites/default/files/docs/page/
Telehealth_Issue_Paper_Final_0.pdf](https://healthit.ahrq.gov/sites/default/files/docs/page/Telehealth_Issue_Paper_Final_0.pdf)*

*Asay, P., & Lal, A. (2014). Who's googling whom?
Trainees' internet and online social networking experiences,
behaviors, and attitudes with clients and supervisors. Training
and Education in Professional Psychology, 8(2), 105-111.*

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Bibliography

- Bennett, B. et al., (2018). Assessing and Managing Risk in Psychological Practice: An Individualized Approach. Rockville, MD: The Trust.*
- Clayton, S., & Bongar, B. (1994). The use of consultation in psychological practice: Ethical, legal & clinical considerations. Ethics & Behavior, 4, 43-57.*
- DiLillo, D, & Gale, E. (2011). To Google or not to Google: Graduate students use of the internet to access personal information about clients. Training and Education in Professional Psychology, 5, 160-166.
doi: 10.1037/a0024441*

C - 43

Bibliography

- Fitzgerald, T., Hunter, P., Hadjistavropolous, T., & Koocher, G. (2010). Ethical and legal considerations for internet-based psychotherapy, Cog-Beh Therapy, 39(3), 173-183. DOI 10.1080/16506071003636046*
- Fisher, C. (2017). Decoding the Ethics Code, (4th Ed.). Thousand Oaks, CA: Sage Publications*
- Greevy, H. (2015). Is skype HIPAA compliant? Downloaded 7/29/15
www.ppaubox.com/blog/skype-hipaa-compliant*

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Bibliography

HIPAA and informed consent:

<http://www.hhs.gov/ocr/private/hipaa/faq/index.html/>

Harris, S. & Kurpius, S. (2014). Social networking and professional ethics: Client searches, informed consent, and disclosure. Professional Psychology: Research and Practice, 45(1), 11-19.

International Union of Psychological Science (2008). Universal declaration of ethical principles for psychologists. Retrieved Oct 8, 2012 from www.am.org/iupsys/resources/ethics/univdecl2008.

C - 45

Bibliography

Kahn, A. (2015). Ethical Issues in Social Networking Research

DOI: 10.13140/RG.2.1.4289.6080

Kanga, (2016). To text or not to text: Texting under HIPAA. The LuxSci FYI Blog. https://luxsci.com/blog/to-text-or-not-to-text-sending-text-messages-under-hipaa.html

Kirkpatrick, D. Reputation Marketing: Seven tactics to manage and protect your brand. Downloaded 7/29/15 www.marketingsherpa.com/article/how-to/7-tactics-to-manage-protect

C - 46

Bibliography

Koocher, G. (2007). Twenty-first century ethical challenges for psychology. American Psychologist, 62, 375-384.

Koocher, G. et al (2008). Psychology and the Mental Health Professions, NY:NY: Oxford University Press

Lannin, D., & Scott, N. (February, 2014). Best Practices for an online world. The Monitor. Washington, DC: APA.

Lehavot, K., Barnett, J., & Powers, D. (2010). Psychotherapy, professional relationships, and ethical considerations in the MySpace generation. Prof. Psych: Res & Prac, 41(2), 160-166.

C - 47

Bibliography

Lehavot, K. (2009). MySpace or yours? The ethical dilemma of graduate students' personal lives on the internet, Ethics and Behavior, 19(2), 129-141.

Madden, M. & Zickuhr, K. (2011). 65% of online adults use social networking sites. Pew Research Center.

Downloaded 7/29/15 <http://www.pewinternet.org/2011/08/26/65-of-online-adults-use-social-networking-sites/>

McNaughton, M. (2012, Jan 13). Social networking stTS: Facebook to reach one billion users by August. Retrieved 10/4/12 from <http://therealtime-report.com/2012/01/13/social-networking-stats-facebook-to-reach-one-billion-by-august-rltm-scoreboard/>.

C - 48

Bibliography

Millan, F. (May/June 2012). Guidelines for Telepsychology: What's on the Horizon? The Monitor, Wash DC: APA

Pomerantz, A. (2012). Informed consent to psychotherapy (empowered collaboration). In S. Knapp, M. Gottlieb, & VandeCreek, L. APA handbook of ethics in psychology (Vol. 1, pp. 311-33). Washington, DC: APA

Psychotherapy Finances (10/6/12). Retrieved www.psyfin.com/articles/0411_yelp_attack.htm

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Bibliography

Rosen, J. (2010, July 19). The web means the end of forgetting. The New York Times. Retrieved from http://www.nytimes.com

Society for Human Resource Management. (2011). Social networking websites and search engines for screening job candidates.

Sturm, C. (February, 2012). Record keeping for practitioners: APA's guidelines help psychologists steer through the sometimes murky waters of how best to document and protect patient information. American Psychologist, Vol 43, No. 2, 70.

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Bibliography

Schenker et al (2014). The ethics of advertising for health care services. American J of Bioethics, 14, 34-43.

Sude, M. (2013). Text messaging and Private Practice. Ethical challenges and guidelines for developing personal best practices, J of MH Counseling, 35, 211-227.

Tran-Lien, A. (May/June 2012). E-mailing your client, The Therapist, 24(3), 20-22.

C - 51

Bibliography

Webb, R. & Widseth, J. (2012). The erosion of aloneness. Journal of College Student Psychotherapy, 26, 165-167.

Welfel, L., & Bunce, R. (2003, August). How psychotherapists use the internet. <http://www.apait.org/apait/download.aspx> tronic vommunication with cuarrent clients. Presented at the annual meeting of the APA, Toronto.

William, T. Online reputation management for psychologists. downloaded 7/29/15.

www.advancedreputationmanagement.com/online-reputation-management-for-posychologists/

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