

Risk Management Consultants, LLC presents

**SOCIAL MEDIA & NETWORKING:
7 MUST-KNOWS FOR ORTHODONTISTS!**



SPECIAL REPORT

Donald E. Machen, DMD, MSD, MD, JD, MBA, CFA

Orthodontist, Board-Certified

Trial Lawyer for Healthcare Professionals

Trial Court Judge

Social Media & Networking: 7 Must-Knows for Orthodontists!

Donald E. Machen, DMD, MSD, MD, JD, MBA, CFA

And

Hollie A. Bernstein Machen, Esq.

Over the past several years, a significant number of orthodontists have contacted us about the use of social media/networking and/or requested assistance with problems that have occurred. As a risk management protocol, having a business plan sub-section devoted to both the positive aspects of these opportunities and a checklist of procedures when things go wrong, is a sound and prudent way to approach this potential opportunity.

Our experience with these important opportunities and the insights gained have enabled us to prepare a list of suggestions that may save you a great deal of time and mental anguish. If the worst-case scenario occurs, the suggestions contained within may save your practice and your financial future. The horror stories of our consulting clients should be carefully considered before embarking on a campaign to market and establish a public relations effort via social media.

Background

Worldwide, there are over a half billion users of MySpace, Facebook, Twitter, LinkedIn, and the other social networks, with approximately 40% of those in the United States, or roughly 200 million. The opportunities are unlimited. However, so are the potential problems that can be caused by disgruntled employees, patients and, as we recently have found, jealous competitors. According to several authorities, social networking is or will be the most influential and efficient manner with which to interact with the current and next generation.

1. Protecting Your Valuable Reputation

Almost all of you have heard of the terms goodwill and intangible assets. In valuing an orthodontic or other professional practice, a large portion of the value is often allocated to one or both of these categories. Imagine for a moment the precipitous drop in value if a barrage of negative comments are circulated through various social media portals such as MySpace, Facebook, Twitter, LinkedIn, etc. The speed at which this destructive and harmful information can go viral is astounding. For this and other reasons, a plan should be in place for both the appropriate strategic use of and tactical methods by which to handle any of these untoward occurrences. Just as you would handle an untoward consequence of a treatment plan, the orthodontist and his or her team, including advisors, must be ready to take action at the first sign of problems related to negative comments through any social networking outlet.

An example may help you to understand the scope and magnitude of the potential problems that can occur.

An orthodontist with a large practice, starting approximately 300 patients per year, with a staff of 14, notices a drastic decline in new patient appointments. In addition, a number of scheduled new patient visits are cancelling. Along with these issues, calls are being received for records to be transferred to other orthodontists. After some review and contact with some of the individuals who are leaving, it is determined that someone sent e-mails to patients, referring dental offices and scheduled patients with both disparaging remarks and a link to a website with unflattering articles about the practice and the orthodontist.

2. What Action Should You Take?

The following protocols are suggested for incorporation into your practice business and marketing plan in order to be as alert and proactive as possible to first avoid such situations, and if they occur, to be ready to move on them immediately to mitigate the serious economic, professional and personal damages that could occur. Left alone, in a very short time, an orthodontic practice could be destroyed by the actions of vindictive present or former employee or patient, or regrettably, a former associate or competitor.

3. Due Diligence

Either you, a trusted and time-tested employee or a carefully selected consulting service that you retain, should regularly search the internet under your name and the practice name. All major search engines including, but not limited to, Google, Yahoo, AskJeeves, AOL Search, Wikipedia, MSN Search, Digg, BX, Bing, etc., should be scoured. Additionally, the popular dentist/doctor patient review websites such as Dr. Oogle, Dentistreview, Vimo, etc. need to be searched. Along the same line, regular surveying of patients as described in depth in our book, Managing Risk in Orthodontic Practice and that we recommend that our risk management clients use in improving patient care, reducing lawsuits and for increasing referrals, should be directed at learning about reputation perception among your orthodontic family.

4. Prevention

All patient information must be securely maintained, not only for compliance with confidentiality and privacy requirements but to limit access and be able to identify access to your vital and valuable patient/computer records, including but not limited to patient lists with names, addresses and e-mail addresses. In this regard, each employee must sign an employment contract (for new employees) and an addendum for current employees specifying their prohibition from use in any fashion the above confidential and private information, except as you specifically authorize. Specific language should reflect the obligations and responsibilities and what might happen in the event the policies are violated.

5. Action Plan

If you identify that someone has initiated a negative campaign against you and or your practice, the following is a suggested plan of action:

- a. Determine the extent of the dispersion and damage; identify the website(s) that are hosting this material or the offender by a quick search on www.whois.com or a site similar to this. This is a free service and is one of the quickest means to identify the provider and/or IP address of those hosting the disparaging material. On occasion, the person is computer/internet savvy and you may need similar computer expertise or consultants to “reverse engineer” an e-mail, or a forensic specialist to assist you with these searches. Be prepared because it is much easier, quicker and less costly if you have arranged for this in advance. These methodologies will identify the perpetrator. As a legal matter, any person who would submit or disperse a malicious attack, especially if done so anonymously for the purpose of adversely affecting the practice may be subject to punitive damages, counsel fees and other damages depending on the jurisdiction.
- b. Immediately file the proper complaint form! Each host has a form specific to their website which enables complaints to be filed. Merely having a lawyer send a letter, no matter how it is worded or how threatening the tone, may be inadequate and will likely be ignored. Our experience in this area has been that if this step isn't followed, no action will result from your request. Merely threatening a lawsuit is ineffective, unproductive and may waste valuable time. You must use the correct, site-specific complaint form. We suggest to our clients that they have complaint forms for each of the major websites on file with the proper filing instruction since the last thing you want to do is to try and locate one when the problem occurs.
- c. Once the complaint form is filed, either the practitioner or their representative should follow-up regularly and constantly with the legal representatives of the hosting facilities until the desired action is taken. Here is where you should be relentless and as aggressive as possible. Be prepared to offer whatever proof that you and your team can assemble to show that the statements or disparaging remarks are without basis, malicious and/or untrue, and that statements are being hosted in violation of the law, including but not limited to, the Digital Millennium Copyright Act. After proper notice, the host can be held liable in court for failing to remove this information which is being published.
- d. Other possible bases or causes of action include: social media that use portions of your material, websites, and other copyrighted or trademarked materials. Such action might include violations of federal and or state copyright and trademark law and subject the offenders to large fines and penalties. The preliminary requirement for this is that copyright and trademark protection be available. This is readily available, as we have arranged for many of our consulting clients.
- e. Further, even if the negative commentary has some measure of truth, lawsuits for invasion of privacy and holding in a false light may be available. Such

commentary often includes statements that are frequently misleading and just as damaging.

- f. Finally, be prepared to file a lawsuit, obtain subpoenas and to request injunctive relief from the courts. There are specific requirements that must be met in order to obtain a temporary injunction. One important factor is the potential for “irreparable harm”. It is likely that when a court is presented with the devastation that will occur to patient care from a disruption in that care caused by false and malicious statements as well as to the practice, the staff, their families and the reputation of the doctor, the court will agree that the harm is likely to be “irreparable”.

Sometimes, the disparaging, negative and extremely harmful material is spread by mail or by word of mouth. Be diligent in tracking down the source. Enlisting the aid of experienced and trained professionals may be needed. This is not the time to be penny wise and dollar foolish. Above all else, have the mechanism in place for prompt and efficient action. Have this as part of your business plan along with a specific action plan and a detailed list of assignments.

6. Your Reputation as an Asset - Reputation Management

Over the past several years, we have counseled our clients that a vital aspect of risk management in orthodontic practice is practice and doctor reputation management. It is critical that everyone in the practice directs his or her efforts to this most important endeavor. As above, reputation management requires its own section in your business and marketing plan, brand management and other practice development efforts. Part of this includes developing your own information dissemination program that can be accomplished in many forms of social networking, including blogs, Twitter, etc., which are frequently updated. These can be in-house or via subscription services. Spend some time and develop your plan. No matter how much time or effort you expend, it will pay dividends in the event what is described herein happens to you. Think of it as another form of insurance, which you all have in the event of a casualty loss, accident or malpractice. We hope these events never occur, but we still insure against them.

7. Some Final Thoughts about Social Networking Interaction

In your social media/networking section of the business plan, it is suggested that a definite protocol should be implemented and that any and all people who will be employed by you and your practice or who represents you be trained to follow the guidelines that you establish. Specifically, patient and potential patient interactions should be limited to the rules that you establish. Failing to do so can lead to less than optimal results and set the stage for your removal from one or more of these opportunities or for negative and disparaging comments. Social media and networking offer many opportunities. However, be prepared because patients will let you and everyone else know if they are displeased with an aspects of their care or interpersonal relationship. Social networking sites offer an expanded public forum for commentary. Additionally, it is important to educate the staff on how their personal social networking comments can

adversely impact the practice. Even a tired, end-of-workday FaceBook comment like “My boss was a jerk today!” can be used out of context and disseminated by others in a campaign against a practitioner. While you cannot restrict the staff’s personal use of social media, educating the staff on the dangers should be enough for employees who share the goal of building a successful practice. (This is easily accomplished by a well-designed incentive compensation program which involves the staff in the practices success.)

Take advantage of the training offered through the various social networking websites and for best results obtain additional training. Also, outsourcing of this aspect after thoroughly performing due diligence on the vendor can be another excellent option. In this regard, it is critical that each representative who will be accessing the various social media networking opportunities be completely familiar with their rules and requirements and agree to comply with those at a minimum and with the rules established by you for your practice. This agreement should be part of their employment or consulting contract. No matter how you proceed, appropriate training, re-training and review is an integral part of your continuing efforts. As discussed above, and its importance should be noted from repetition, the confidentiality and privacy of the patient records are of the utmost importance both to comply with the requirements under HIPAA, state law and professional ethics, but also to insure that the records are not used for untoward purposes.

With the above in mind, implementing a social media/networking program can become a critical component of your orthodontic practice growth strategy.