MANAGE YOUR ONLINE REPUTATION — OR SOMEONE ELSE WILL

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Today, consumers turn to the Internet for reviews on everything from restaurants to hotels, plumbers to contractors, and, yes, even board certified plastic surgeons. According to a 2011 study by the Pew Internet and American Life Project, “[e]ight in ten internet users look online for health information, making it the third most popular online pursuit among all those tracked by the Pew Internet Project, following email and using a search engine.”¹ Forty-four percent of Internet users look online for information about doctors or other health professionals.² Where do they look? A recent survey found that forty-one percent of breast augmentation patients begin their informational searches with Google.³ Patients seek information not only from search engines, but also from numerous review sites. What patient reviews say about you can positively or negatively impact your business.

When reviews are based on accurate information, these web sites can have real value, for both patients and surgeons. The Internet is an unregulated space, however, and it is impossible for patients to know which reviews they can trust. Most web sites do not require someone to prove that she was actually your patient before posting a review, and most sites make no effort to ensure that the information posted about you
is true. Further complicating the matter, Internet Service Providers (ISPs) are immune from liability for defamatory postings under Section 230 of the Communications Decency Act,\textsuperscript{4} and your ability to respond to patients’ postings is limited because of the need to keep their medical information confidential.

Despite these challenges, if you are proactive in managing your reputation and take appropriate steps to address defamatory postings when they are made, the Internet can be a valuable tool to help build your business. If you fail to manage your reputation, however, someone else will (perhaps an unhappy patient, a disgruntled former employee, or a competitor), and the professional reputation that you worked so hard to develop may be tarnished or destroyed.

\textbf{Assess Your Current Online Reputation}

If you have not already taken charge of your online reputation, the first thing you should do is assess it. Search for your name and your practice’s name on a variety of web sites, and see what patients are writing (and reading) about you. Look at search engines (Google, Bing, Yahoo!), consumer review sites (CitySearch, Judysbook, InsiderPages, Yelp), medical review sites (RateMDs, Vitals, Makemeheal), and plastic surgery-specific sites (RealSelf, Implantinfo, Breastimplants411). Practices outside of the United States should search the popular review sites in their area, as well as International review sites such as WhatClinic, which rates plastic surgeons in Europe,
Asia, the Americas, and Oceania (Australia and New Zealand). How will patients view you based on the first page of your Google search results? On review sites, are most of your reviews five stars, or is every other posting a complaint about the rudeness of your staff or an expression of dissatisfaction with your work? If you have a problem, now is the time to find out and address it.

**PROACTIVELY BUILD YOUR REPUTATION**

In building your online reputation, start by taking control of what you can control. In their book *Radically Transparent: Monitoring and Managing Reputations Online*, authors Andy Beal and Dr. Judy Strauss point out that “Google is more than just a search engine – it’s a reputation engine.” Because many people simply review the first page of Google’s search results, you should take steps to fill that page with information that you can control about your practice. Your practice’s web site should be in the top spot, and you should consider filling in the other spots with Facebook and Twitter pages for your practice, a blog, a business profile with LinkedIn, and, for those with marketing videos, a YouTube page.

Ultimately, you may want to get help from someone who specializes in search engine optimization (SEO), but you can begin taking control of your Google search results on your own. You should begin by filling your web site and social media sites with quality content. Determine which key words best describe your practice’s services,
and infuse those words into your content. Spiders like fresh content, so you should update your content on a regular basis. Finally, because Google’s robots jump from page to page on the web via hyperlinks, work to get as many other, quality sites to link to your sites as possible. Of course, the better your content, the more likely others will want to site to it. For other suggestions, check out Google’s Search Engine Optimization Starter Guide. Next, you have a wealth of satisfied patients – encourage them to write positive reviews. It is inevitable that you will get a negative review from time to time. If it is buried within fifty glowing reviews, it will have very little impact on your reputation. If a couple negative reviews are your only reviews, however, patients may start looking elsewhere. Consider giving happy patients a postcard with easy-to-understand instructions on how to post a positive review.

To the extent possible, address patients’ concerns so that they have no reason to post negative reviews. A well-trained staff can help maintain open lines of communication with your patients and identify any issues as they arise. If your practice promptly addresses patients’ concerns, you may turn what would have been a negative posting into a glowing one.

The final step in proactively building your reputation is to regularly monitor search engines, review sites, blogs, and social networking sites for what is being said about you and your practice. You may ultimately decide to hire an expert to monitor
the Internet for you, but there are a number of tools available to help you get started, including Google Alerts, BoardTracker, MonitorThis, BlogPulse, and Search.twitter.com.

**DEFEND AGAINST REPUTATION ATTACKS**

Despite your best efforts, derogatory – and sometimes defamatory – Internet postings will be made about you and your practice. You have a number of options, including legal options, to defend against such attacks and get the postings removed. Of course, the usual disclaimer applies: this article is written for informational purposes only and not for the purpose of providing legal advice. Legal advice must be tailored to the specific circumstances of each case, so nothing contained herein should be used as a substitute for the advice of competent legal counsel.

As an initial matter, it is worth noting that not every posting is worth addressing. You might choose to simply ignore a mildly negative posting that is surrounded by many positive postings, for example. Occasionally, if a criticism seems legitimate, you might want to briefly respond, encouraging the individual to contact you directly so that the issue can be resolved. It is usually not beneficial, however, for a certified plastic surgeon to engage someone in a back-and-forth discussion on the web site. Your ability to defend yourself in this forum is limited because you cannot reveal patients’ confidential medical information, and a heated discussion will simply call unnecessary attention to the complaint.
When postings may damage your reputation, you should address them immediately. The first step is usually to contact the web site and request that the offending posting be removed. Understand that to be viewed as unbiased, review sites need people to write both positive and negative reviews about businesses. If these sites removed negative reviews every time someone complained about them, the sites would have little value to consumers. Therefore, web site administrators are not inclined to remove postings, and you will need to carefully think through your approach with each site.

On many web sites, reporting an abusive posting is as simple as clicking on a link immediately below the review, which allows you to flag the posting or “report abuse.” For other sites, you may need to send an e-mail to their customer service department or even a letter to their CEO or legal counsel. The most effective way to convince a web site to remove a posting is not to complain about how it is harming your reputation, but to demonstrate how it violates the web site’s Terms of Use. Virtually every web site on which reviews are written has Terms of Use or Terms of Service, which normally prohibit postings that are abusive or defamatory, that reveal confidential information, or that violate any federal or state law. Most web sites make clear that they reserve the right to remove any postings that violate their Terms of Use.

When contacting a web site to request that a posting be removed, be deferential and respectful. If you are angry and demanding, your request will usually be denied.
Those of us who deal with the same web sites on a regular basis are able to develop a rapport with the individuals who have the authority to remove the postings. By contacting these individuals directly, we can often get some defamatory postings removed the same day they are posted. While some sites are amenable to removing postings that may violate their Terms of Use, other sites will not remove postings no matter how offensive and defamatory they are.

If the web site will not remove the posting, the next step is usually to contact the individual who posted the review and request that she remove it. Sometimes it is obvious who that person is, either based upon the substance of the complaint, or the name under which it was posted. Perhaps the biggest problem with review web sites, however, is that most of them permit anonymous postings. Therefore, you might have no idea who made a posting, and that person might not have been an actual patient at all.

If an anonymous defamatory posting has the potential to significantly harm your reputation, you may be able to use the legal process to trace the posting back to its author. As a general matter, the process of discovering the author of an anonymous posting begins with the filing of a “John Doe” lawsuit and then the service of a subpoena on the web site to which the posting was made. Most web sites will not voluntarily disclose users’ personal identifying information and, indeed, promise to keep this information private. That said, the sites’ Terms of Use often make clear that such
information may be released when it is requested by subpoena. As a result, some web sites simply produce the information upon receipt of the subpoena. Most of the larger sites, however, provide notice of the subpoena to the person who posted the review, giving her the opportunity to file a motion to quash the subpoena if she objects to her identity being revealed. A few sites actually fight the subpoenas themselves in an effort to protect the anonymity of their users.

To address challenges to subpoenas, the courts have “formulate[d] a legal and procedural standard that balances the rights of the anonymous speaker who claims to have done no wrong and the rights of the allegedly wronged subject.” While the standard varies from jurisdiction to jurisdiction, the courts generally require: (1) that the anonymous user be given notice of the subpoena and an opportunity to respond to it; (2) that the party seeking the discovery specify the cause of action on which its claim is based; and (3) that that party make an evidentiary showing of its likelihood of success on the merits of the claim. When a posting is truly defamatory, the courts will generally require that the web site identify the anonymous user.

Once you have the name and the contact information for the individual who posted the defamatory review, your attorney can send her a cease and desist letter, spelling out the potential claims against her and demanding that she remove the review. If she signed an agreement prohibiting such postings, or assigned their copyright to the practice, your attorney can remind her of the same and attach a copy of the agreement.
When faced with the possibility of a lawsuit, many individuals will voluntarily remove their postings.

FILE A LAWSUIT AS THE LAST RESORT

Most defamatory postings can be addressed without the filing of a lawsuit. Nevertheless, there are times when a web site will not remove a very damaging false posting and the individual who made the posting simply ignores your attorney’s cease and desist letter – and sometimes continues blanketing the Internet with lies about you and your practice. In these limited situations, when lesser efforts have failed to stop the behavior, filing a lawsuit may be your only option.

The claims that may be available to you will vary depending on the content of the posting, the jurisdiction (including country) in which your practice is located, and other circumstances. In the United States, some of the most common claims that arise in this context are defamation (libel), tortious interference with business relations, breach of contract, and invasion of privacy. The law in other countries may provide different protections. The European Union, for example, is currently considering “right to be forgotten” legislation that would force web sites to remove information when it is no longer needed for legitimate purposes. In 2011, a leading case involving this doctrine was brought by a plastic surgeon in Spain, who sought to compel Google to remove from its search results a newspaper story about a malpractice lawsuit that had been
filed against him years earlier. The surgeon, Dr. Hugo Guidotti Russo, had been cleared of any wrongdoing, but the negative article continued to show up on the first page of his Google search results, which he believed was harming his ability to attract new patients. The Spanish court and the Spanish Data Protection Authority supported him in the matter, ordering Google to remove the information from its index. Not surprisingly, Google is contesting the ruling, arguing that the Spanish privacy regulators have exceeded their authority, and the “right to be forgotten” remains a hotly contested issue in Europe.

If you choose to file a lawsuit, make sure that your attorney understands your goals. Assuming the individual who posted the defamatory review is a patient, a former employee, or someone else without deep pockets, you are probably not suing to secure a big (uncollectable) judgment. Rather, your goals are likely to get the postings removed as quickly as possible, and to ensure that no additional postings are made.

Often times, when a process server shows up at an individual’s front door and hand-delivers a summons and complaint initiating a lawsuit, it is a wake-up call for the recipient. Suddenly, the individual who ignored your attorney’s cease and desist letter may now agree to remove her defamatory postings and promise not to post anything about you or your practice again. Thus, such actions are often promptly settled, with everyone signing a settlement agreement that accomplishes your goals without your having to incur significant legal fees to prosecute a lengthy lawsuit.
CONCLUSION

To remain successful in the Internet age, certified plastic surgeons have no choice but to start managing their online reputations. It takes time and effort, but it need not be cost-prohibitive. Most practices can handle much of the work themselves, such as monitoring what is being said about them in the blogosphere. When necessary, lawyers, public relations specialists, and Internet gurus can help. The choice is yours: proactively manage your reputation now, or stand by and let competitors, disgruntled employees, and unhappy patients manage your reputation, and watch your business decline.
REFERENCES


2. Id.


