

FIVE STARS
GREAT SERVICES
PERFECT I'AM HAPPY
WOW !!! TOP NOTCH
EXCELLENT



BAD EXPERIENCE
WORST AWFUL
UNSATISFACTORY
POOR QUALITY
NEVER AGAIN

How Physicians Can Respond to Negative Online Reviews

BY ERIN ADAMS, RAY QUINNEY NEBEKER

IN THIS DAY AND age, it is nearly impossible for a physician or provider group to escape the occasional (or not-so-occasional) negative online review from a dissatisfied patient. Review websites like Healthgrades, WebMD, Yelp, Facebook, Google, and Angie's List abound, and research shows that 77% of consumers say they use online reviews as a first step in finding a new physician.¹

The good news is that physician reviews tend to be positive, and the vast majority of negative reviews relate to things unrelated to actual patient care (things like waiting times, unprofessional receptionists, or parking issues).² Still, some patients do complain online about a physician's bedside manner, issues with treatment or follow-up care (or lack thereof), or incorrect diagnoses.³

So what is a physician to do when an unfavorable review shows up online? Some providers respond online directly to the

negative reviews, acknowledging the patients' concerns, apologizing, explaining the situation, or offering a solution. This approach can go a long way in resolving current patient concerns and assuaging the concerns of potential future patients who are checking into a new physician. However, providers must be especially careful not to disclose HIPAA-protected patient information. Providers should check with legal counsel before responding directly to a patient to make sure their response complies with applicable law.³

One solution for responding that makes it easier to be HIPAA-compliant is to reach out to the negative reviewer directly and resolve their complaint in private. If the reviewer has not left enough identifying information, the provider can leave a responsive comment asking the reviewer to contact the provider for a resolution. This approach is helpful in that HIPAA-related pitfalls are more easily sidestepped, and third parties who are checking reviews can

see that the provider is invested in resolving negative situations.

Other providers may choose to ignore negative reviews when posted, or not to monitor online reviews at all. However, a course of inaction is becoming less and less advisable: Insurance companies are beginning to use physician reviews as a tool for physician performance review, and hiring physicians or groups will check a potential candidate's online reviews before hiring that candidate.⁴ Still, in some cases, ignoring a bad review from a patient who is known to be inflammatory may be the best course of action to avoid fanning the flames and making a situation worse.

In some situations, where a reviewer has used obscenities or hateful language, a provider might be able to request that the website hosting the comment have the content removed. Providers or their counsel can review the website's terms of use and find instances where reviews do not

1 See Shirley S. Wang, *When Doctors Get Negative Reviews Online*, *Wall Street Journal*, June 26, 2017.

2 See *id.*

3 See *id.*

4 See Andrew Pasternak, Joseph E. Scherger, *Online Reviews of Physicians: What Are Your Patients Posting About You?*, 2009 *Family Practice Management*, May-June at 9-11.

comply, then ask the website to take down these non-conforming reviews. Providers and their counsel can also request that a website verify a reviewer as legitimate. However, where verified reviewers leave reviews that conform to websites' terms of use, it can be incredibly difficult to get negative reviews removed.

Still other providers take an aggressive approach, suing the reviewer (or the website) for libel or defamation. However, the burden of proof is on the provider bringing the lawsuit, and lawsuits can quickly eat up more time and resources than they're worth. To prove defamation (which includes libel) in Utah, a physician must show that a reviewer published statements concerning the physician, that the

statements were false, defamatory, and unprivileged, that the statements were published with the requisite degree of fault, and that their publication resulted in damage.⁵ Under Utah law, "a statement is defamatory if it impeaches an individual's honesty, integrity, virtue, or reputation and thereby exposes the individual to public hatred, contempt, or ridicule."⁶ Courts do not view individual words in isolation; rather, they look carefully at "the context in which the statement was made, giving the words their most common and accepted meaning."⁷ Utah courts have held that certain statements made in online reviews are expressions of opinion and thus not demonstrably false, another hurdle for any provider who wishes to fight a negative online review in court.⁸

In sum, there are a variety of ways providers can deal with negative online reviews, which should be considered collectively with the provider's marketing team and legal counsel in order to achieve the most positive outcome. In most cases, it is advisable to deal with different comments in different, situationally appropriate ways. ■



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5 See *West v. Thomson Newspapers*, 872 P.2d 999, 1007–08 [Utah 1994].

6 *Id.* at 1008.

7 *Id.* at 1009.

8 See, e.g., *Spencer v. Glover*, 397 P.3d 780, 786 [Utah Ct. App. 2017] (most readers of a review that someone was the "worst ever" would view it as exaggerated commentary expressing the reviewer's frustration and would interpret as conveying the reviewer's general dissatisfaction with the reviewed's performance); *Westmont Residential LLC v. Buttars*, 340 P.3d 183, 189 [Utah Ct. App. 2014] (given the context of an online form intended for consumers to review local businesses, reviewer's use of the term "crooks" was "no more than rhetorical hyperbole").