

# The Unprofessional Professional: Identifying Social Media Missteps and Other Online Social Gaffes

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# Objectives

- Identify online professionalism issues that could result in disciplinary actions, reputational harm and legal consequences.
- Recognize social media use has benefits when professionals use it appropriately.
- Effectively explain and demonstrate the correct way to respond to negative reviews without breaching HIPAA.
- Understand the advantages and disadvantages of filing a defamation suit against a patient.

# Social Media in Healthcare

- Communication tool
  - Flu visitation restrictions
  - Parking lot closures
  - Weather-related clinic/services closures, cancellations or delays
- Education tool
  - Heart health, colon health and organ donation months
- Marketing tool
  - New providers
  - New services

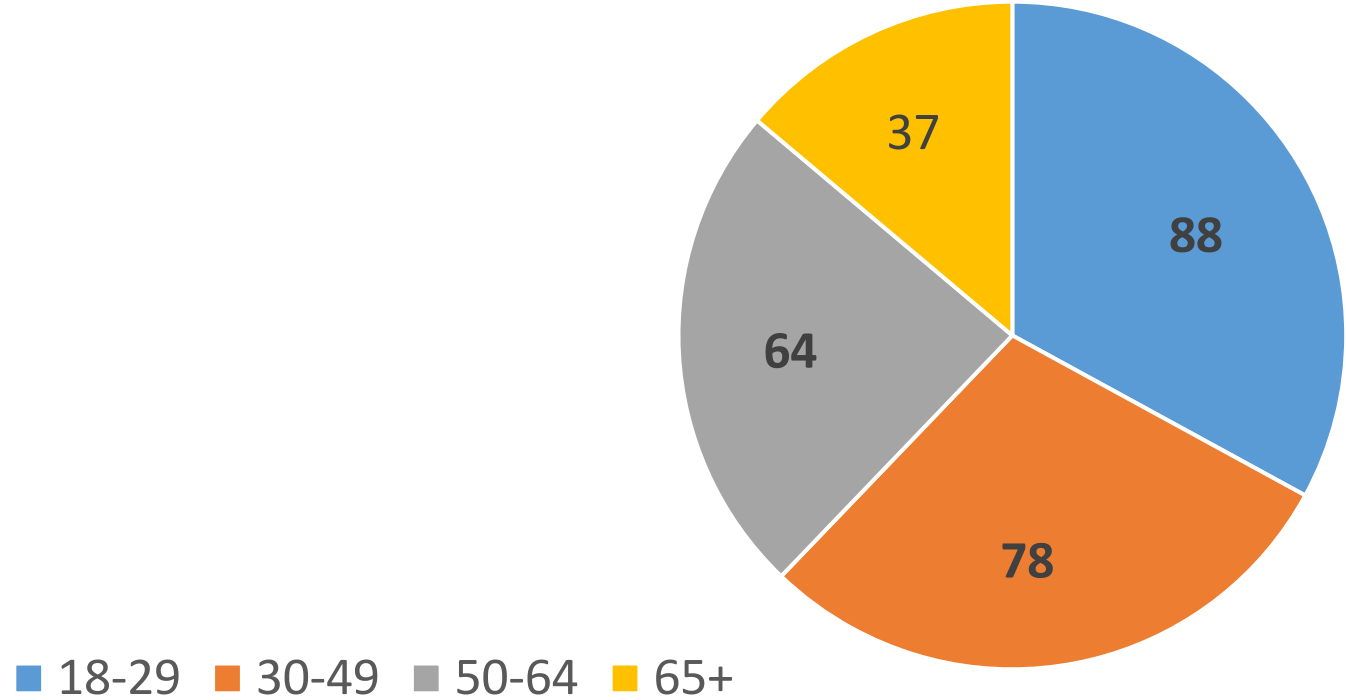


# Policies, Procedures and Staff Education

- Acceptable use policy
- Information security policy
- Personal device user agreement
- Remote access agreement
- Social media consent (facility to use employee photo or testimonial)
- Protection of facility/practice
- Protection of the employee
- [www.KAMMCO.com](http://www.KAMMCO.com)

# Social Media Use in the United States in 2018

Percentage by Adult Age Groups



(www.statista.com)

# Where and What Do You Post?

- What is your medium?
  - Social networking
  - Professional networking
  - Media sharing
  - Content production
  - Knowledge/information aggregation
  - Virtual reality/gaming environments
- What do you post about?
  - Personal issues
  - Professional issues
  - Articles
  - Funny sayings and memes
  - Pictures of outings



©  
(Opus59.com)

# Profession, Professional and Professionalism

- Profession
  - Neutral or descriptive term
- Professional
  - Value term
- Professionalism
  - Noble, honorific, evaluative term

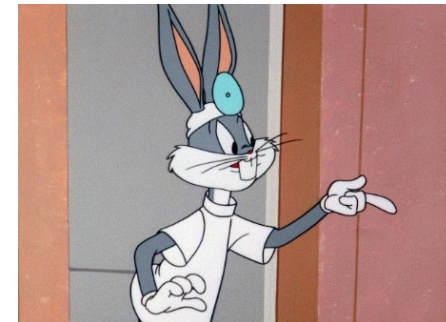


# Reality vs. Online Persona

- Kind
- Caring
- Skilled professional
- Enjoys the company of others
- Good employee/employer



- Rude, mean-spirited
- Only there for the paycheck
- Hack – may even cause harm
- Likes to drink alcohol or use drugs
- Does not like job/profession



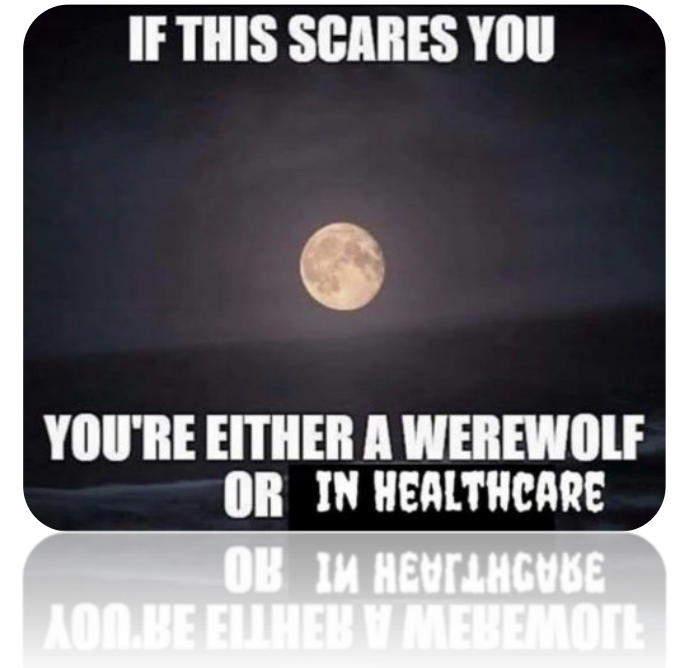
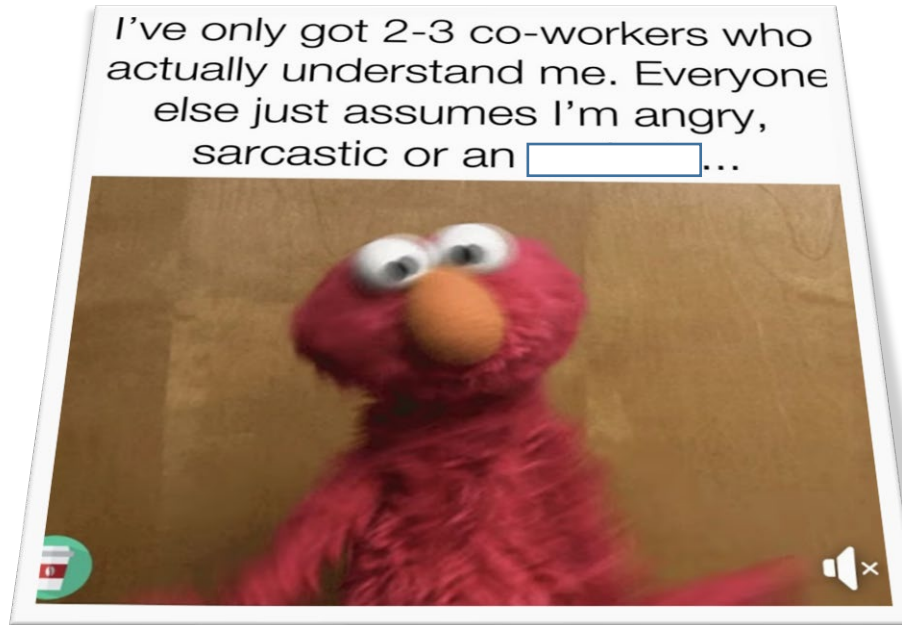


# Challenge: Your Online Content

- Review your personal timeline/story/feed/blog
- What does it say to you?
- What would it say to a:
  - Patient
  - Plaintiff's attorney
  - Employer
  - Health insurance company



# Mememes Can be Devastating to Your Character

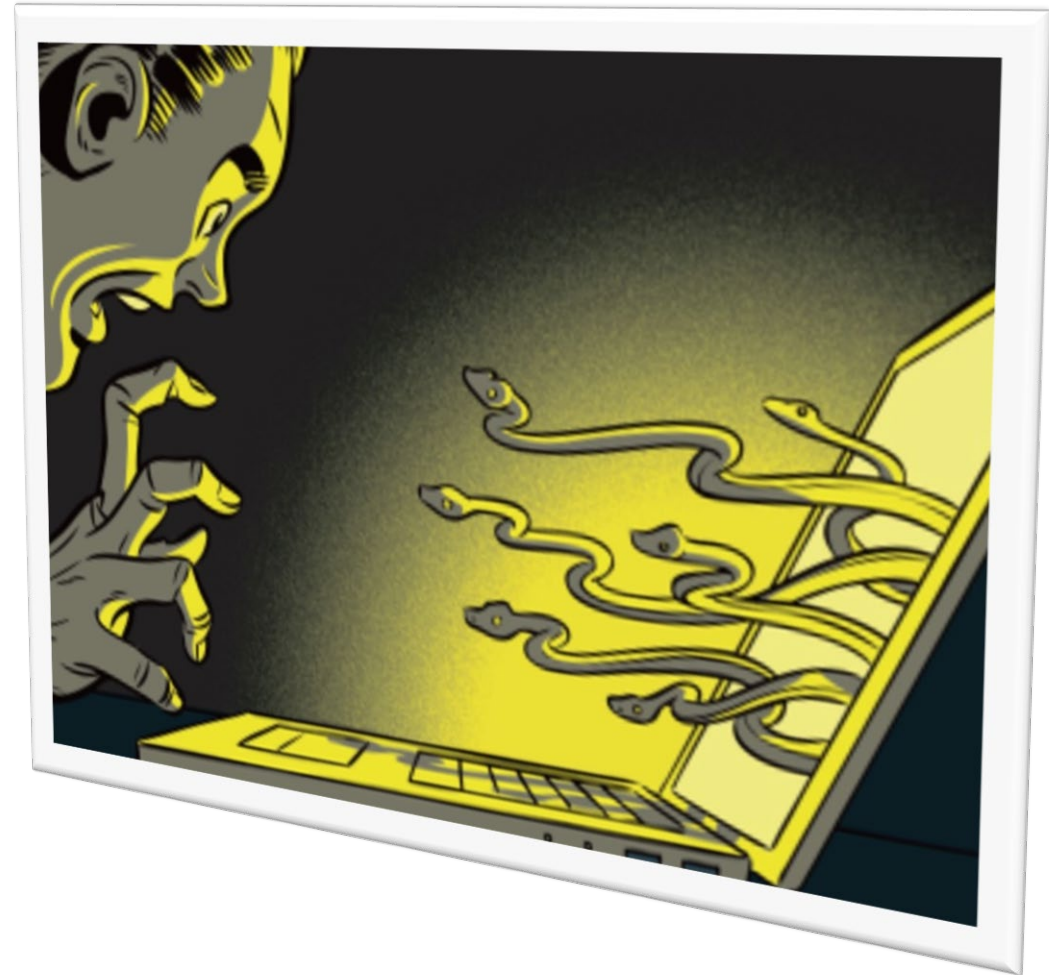


# Mememes Can be Devastating to Your Character



# Impacts of Rants and Ravings

- HIPAA
  - Policies and procedures
- Proprietary information
- Employment
  - Employee right to free speech
  - Employer policies
  - New employer review
- Patients/Plaintiffs
- Responses to others



# Manage Your Accounts

- Manage your friends and followers lists
- Manage what is posted to you
- Manage what you post to others
- It is often a full time job



# Manage Your Privacy Settings

- Check your audience
- Manage privacy setting on each account
- Guard personal information
- Manage third party apps



# When the Licensing Board Wants Your History

- Complaint to the board
- Provide instructions on how to complete task:
  - Facebook: Click at the top of your Facebook page and select “Settings.” Click “Download a copy of your Facebook data” below your general account settings. Click “Start my Archive.”
  - Snapchat: Request to have a zip file sent.
  - Instagram: Request to have a zip file sent.



# When an Attorney Wants Your History

- Lawsuit
  - Character development
  - Investigation of parties involved
  - Spouse, close associates, immediate family members
- Discovery/eDiscovery
  - Depositions
- Trial

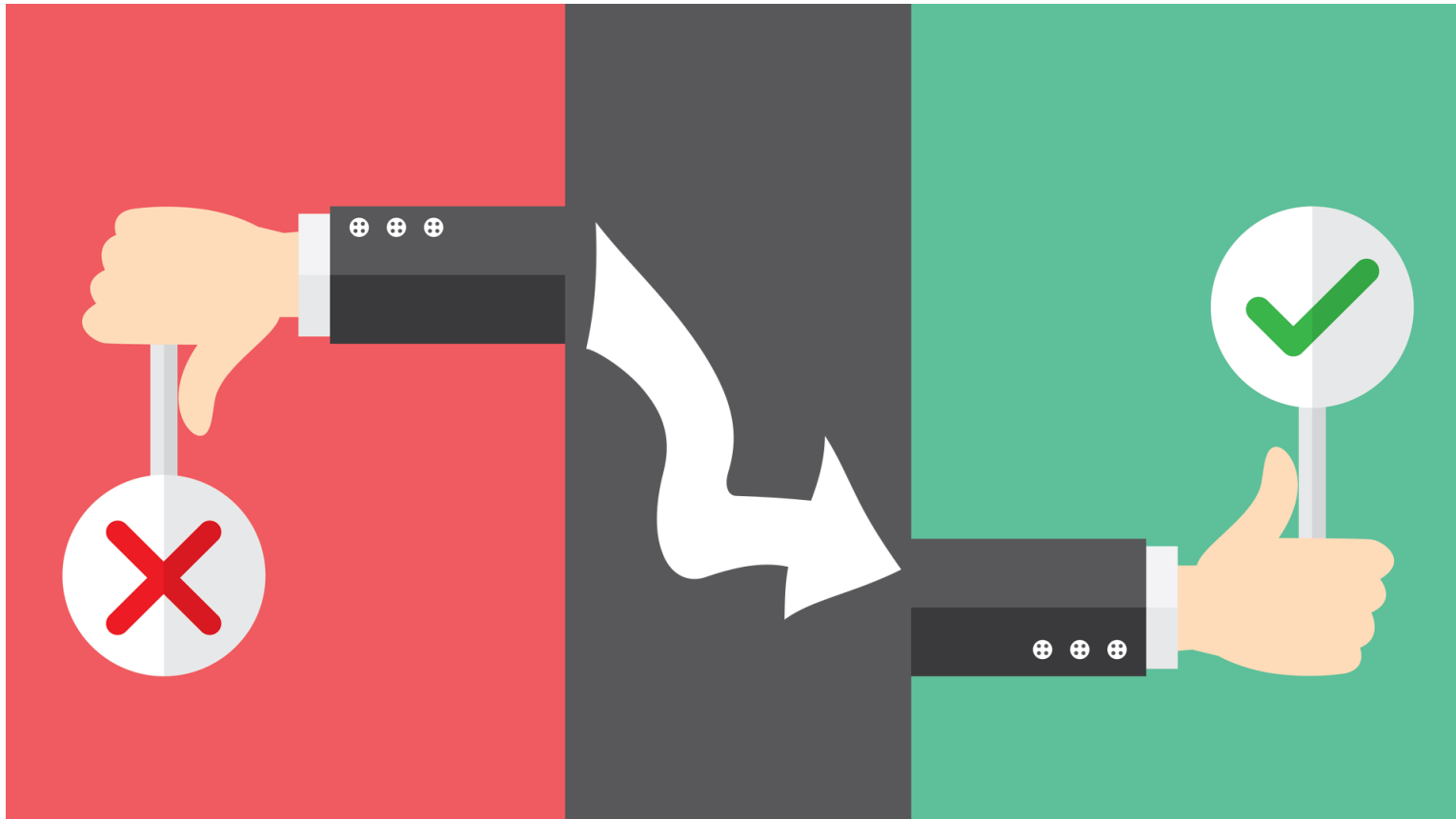






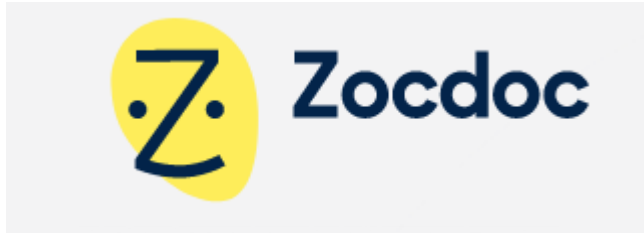
Social media tells our story.  
Technology allows each of us the  
limitless ability to record our  
stories to an attentive world.

# Responding to Online Reviews and When to Consider Legal Action





healthgrades™



# Are Provider Review Sites Worthwhile?

According to Software Advice™:

84% of patients use online reviews as their first step in finding a new doctor.

68% form an opinion after reading between one and six online reviews.

51% of patients said public physician review comments were a good idea.

A study by the *Journal of General Internal Medicine* revealed that 53% of providers looked at physician review websites in hopes of better understanding their patients' experiences and to improve their practices.

# Four Largest Sites for Online Ratings in Healthcare

Healthgrades	Vitals	RateMDs	Yelp
Pro: It does not ask patients to answer questions. Instead, they simply complete a survey.	Pro: If you have high ratings, it will show up on the first page of a Google search.	Pro: If you prove a fraudulent review was posted, the site will take down the review.	Pro: You can respond publicly and privately to reviews. Also, the site filters out reviews they believe to be untrustworthy.
Con: Physicians cannot reply individually to lowly-graded surveys.	Con: Patients can post anonymously, so if you have a low rating, you may not be able to contact the person.	Con: You must contact the support team to have reviews removed.	Con: Negative reviews cannot be removed unless a formal request is made to their support staff, and results vary.

# Negative Comments Sting



# So You Have a Negative Review, Now What?

Step 1: Take a deep breath.

Step 2: Investigate and learn more about the patient visit.

Step 3: After gathering the facts, decide if the negative review warrants a response.

Step 4: If so, take the conversation offline and reach out to the patient privately.

Step 5: Should you choose to publicly respond, do so without violating HIPAA.



# What Should You Say if You Contact the Patient Privately?

1. Simply ask the patient, what would have made their experience better or more pleasant?
2. If what they suggest is reasonable and within your scope of authority, consider taking the proper steps to make it right, but do not make any promises.
3. After the matter is resolved, politely ask the patient to consider removing, modifying or updating their initial review.



# Actual Example of a Negative Review

★ ★ ★ ★ ★ 11/13/2015

I don't understand why all the positive reviews. I would agree very clean practice, respectful staff. I would agree, friendly, outgoing and courteous staff however they seem like car sales mans. Trying to butter you up, sale you a product and overcharge your insurance. I went to 5 different dentist and this company by far told the worst. Dentist stated teeth to be removed, cavities to be filled, my crown had to be redone, etc.

I just don't see how this company can operate ethically and with integrity. Beware

Was this review ...?

# Maintain Patient Privacy at All Times

## Direct Message:

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Hi [REDACTED]

When you came in recently for a consult seeking aesthetic advice about a dental crown, we gave you our honest advice based on the type of smile you stated you were looking for. As no dental work was done, and you are not a patient at this time, nothing was charged to your insurance; thus, there is no base to your claim that we overcharge to insurance. At [REDACTED] [REDACTED] we remain committed to providing top-quality dental care to our patients and the community, while maintaining the highest level of ethics and integrity.

Please contact us directly.

Thank you,  
[REDACTED]

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# An Example of How to Respond Online Without Violating HIPAA

Dear Samuel, thank you for your feedback. At Happy Smiles Dentistry, we are committed to providing the best patient care experience. Please feel free to contact us at [contact information/person].

- Remember, never confirm the patient was seen by the organization or release any patient information.

# Reasons A Website May Remove a Negative Review



A review can be taken down for several reasons:

- Third party review. The reviewer did not visit you personally, but posted on behalf of someone else who did.
- Person did not use the service. The reviewer did not use the service at all, but left a negative review based on an advertisement or other source.
- Personal attacks on staff. A reviewer uses language that is derogatory or defamatory, or attacks a person's race, ethnicity, disability, religion, etc.

# Negative Review vs. Defamatory Review



It is important to note the difference between a negative review and a defamatory review. Negative reviews are truthful accounts of what happened in your office.

However, as soon as a review contains factually inaccurate accusations, freedom of speech no longer protects the author of the content, and you are able to file a lawsuit against him/her.

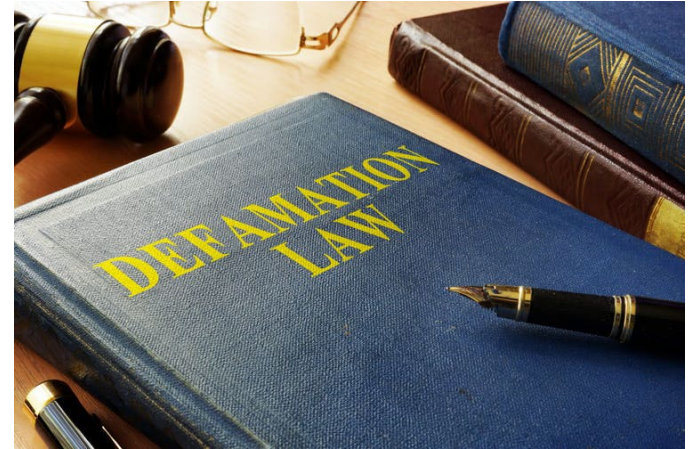
Also, third party websites are shielded from liability under the immunity provided by §230 of the Communications Decency Act (47 U.S.C. §230). Therefore, generally, rating sites are not responsible for what others write.

# What is Defamation?

There are two main types of defamation:

1. Libel (written defamation)
2. Slander (verbal defamation)

When a potentially defamatory statement is made online or through social media, it is considered libel. Postings made on Yelp or Facebook are considered the written (or “posted”) word.



# Five Elements Must be Proven to Win a Defamation Case

- There was a “published” statement, meaning that the speaker made the statements to at least one person other than the plaintiff.
- The statement must be false. A true statement is never defamatory.
- The statement must be a statement of fact, not opinion.
- The “speaker” must have either acted with malice or been negligent in making the statement, depending on the type of case.
- The plaintiff must prove some amount of damages.

# Is a Defamation Lawsuit the Answer?

The outcomes for physicians who sue patients for online reviews are seldom satisfactory. Why?

- It is expensive.
- It is time consuming.
- It is stressful.
- It is risky.
- It is not easy to get reviews permanently removed.
- It attracts backlash from customers and media.
- It is difficult to prove damages.



# Lawsuits Filed Because of Negative Online Reviews



# Arizona Doctors' Case

In 2011, Albert Carlotti, MD, and Michelle Cabret-Carlotti, MD, DDS, successfully sued patient, Sherry Petta, for defamation after she posted negative statements about the two doctors online.

In 2007, Albert Carlotti performed a number of procedures on Ms. Petta, a singer, including a rhinoplasty. Afterwards, she created a website to warn others about Dr. Carlotti, alleged the doctors weren't board certified and were being investigated by the AZ Medical Board. The doctors claimed the statements Ms. Petta made were untrue and portrayed them in a false light.

**Outcome:** A jury agreed and awarded the doctors \$12 million, which was later vacated on appeal (January 2015). The Court of Appeals mandated a new trial to address both liability and damages.

# New York City OB-GYN Case



Dr. Joon Song, MD, PhD, a New York City area gynecologist, sued patient Michelle Levine over critical reviews she left about his practice on several online sites.

Levine wrote, “Very poor and crooked business practice. I suspect this doctor gives unnecessary procedures to a lot of people and then charges the insurance sky high prices and no one knows the difference.” She gave the practice one star on Yelp.

Two weeks later she was sued for defamation. Though Levine removed her posts from the sites after being sued, Song wants her to pay \$1 million in legal fees and damages. Dr. Song claimed to be defamed by being labeled dishonest or criminal.

**Outcome:** This case is ongoing and currently slated for court in late 2019.



# California Chiropractor Case

In February 2008, Dr. Steven Biegel, Chiropractor, sued former patient Christopher Norberg over a critical review that he posted to Yelp.

The review accused Dr. Biegel of being dishonest and of engaging in fraudulent billings practices. After Dr. Biegel's counsel threatened to sue, patient removed his review. Dr. Biegel sued anyway, bringing claims of defamation and false light of invasion of privacy.

**Outcome:** In January 2009, the parties settled the case on undisclosed terms. Patient replaced an earlier Yelp posting in which he said he had been sued with the following:

“A misunderstanding between both parties caused us to act out of hand. I chose to ignore Dr. Biegel's initial request to discuss my posting. In hindsight, I should have remained open to his concerns. Both Dr. Biegel and I strongly believe in a person's right to express their opinions in a public forum. We both encourage the Internet community to act responsibly.”



# SLAPP Stories

# Strategic Lawsuit Against Public Participation (SLAPP)

A **SLAPP** is a lawsuit that is intended to censor, intimidate and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition.

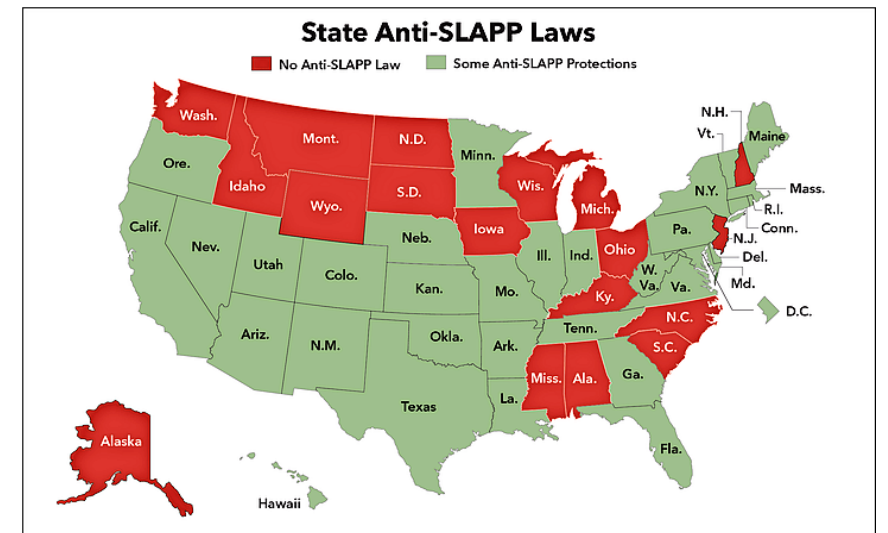
The acronym “SLAPP” stands for “Strategic Lawsuit Against Public Participation,” a phrase coined by two law school professors in the late 1980s.

**Anti-SLAPP** laws are designed to provide for early dismissal of meritless lawsuits filed against people for the exercise of First Amendment rights.

# Anti-SLAPP Statutes

As of January 2019, 28 states have Anti-SLAPP statutes: Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Missouri, Nebraska, Nevada, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Tennessee, Utah and Vermont. In addition, there are anti-SLAPP statutes in the District of Columbia and Guam.

Kansas: Public Speech Protection Act (K.S.A. 60-5320) enacted in July 2016.



Source: Data from the Public Participation Project

Bloomberg BNA



# California Anti-SLAPP Suit

In *Rahbar v. Batton*, the patient, Jennifer Batton, posted her critical review on Yelp in August 2008, writing “**DON’T GO HERE. MOST PAINFUL DENTIST EVER.**” and voicing her displeasure with her dentist’s treatment choices, billing practices and communication skills.

In September 2009, the dentist, Dr. Rahbar, sued his former patient in San Francisco Superior Court, pleading claims of defamation and invasion of privacy based on the Yelp review.

**Outcome:** The dentist had to pay \$43,000 for his patient’s legal fees. The dentist filed a second complaint, and the case was dismissed again. Patient was awarded \$26,000 in legal fees. Total amount paid was \$69,000.



# Unintended Consequences of Filing a Lawsuit

## **Reason #1: A small story can gain national attention.**

### Streisand Effect

- In 2003, Barbara Streisand sued a photographer for taking aerial pictures of her home which were included in a publicly available collection of coastline photographs.
- She filed suit for invasion of privacy, which drew more attention and over 400,000 people viewed the pictures of her home online.
- Internet search engines will take notice.

## **Reason #2: The optics are bad.**

- The court of public opinion sees you as a bully, using the court system as a scare tactic.
- The general public is likely to identify with and sympathize with the patient, not the physician.
- The public is left with the imagery of the physician as a villain for filing a suit.

# If You Still Want to Sue, Consider the Following:

- Is this a one-time negative review, or is this customer beginning a campaign against your business?
- Will the negative review appear at the top of search engine results or on the third page of results?
- Can you prove that your practice was harmed as a direct result of the review?

Bad reviews are a huge opportunity, not a problem.



# Questions



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