



Editorial

Posting clinical data and images on social media: Ethical and legal considerations

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Social media is an umbrella term used for websites and applications that focus on communication, interaction, content sharing, and collaboration. Social media promotes the sharing of thoughts, views, ideas, and information through virtual networks. Social media covers a broad range of apps and platforms, from Facebook, Instagram, and WhatsApp to Twitter and YouTube. More than 4.7 billion people use social media, equal to roughly 60% of the world's population.^[1]

Today, social media messaging apps and platforms are the most commonly used sites worldwide. In 2023, 94.8% of users accessed chat and messaging apps and websites, followed closely by social platforms (94.6%). Search engine sites were next, with 81.8% of users accessing them.^[2] Facebook is the largest social media platform in the world with 2.96 billion users. The most popular social media websites as of January 2023 were Facebook (2.96 billion users), YouTube (2.51 billion users), WhatsApp (2 billion users), and Instagram (2 billion users).^[2]

Social media platforms can be classified according to the interests of their users and their purpose of the use. There are platforms that appeal to video game players, social gamers, video sharers, professional business networks, virtual worlds, review platforms, and beyond. The types of social media can be classified in various ways but are most often divided into six categories – social networking, bookmarking, social news, media sharing, microblogging, and online forum sites.

People use various social media applications for career opportunities, find others across the globe with like-minded interests, and share their political views. Entertainers and politicians use social media to engage with constituents and voters. Social media allows users to share content, interact online, and build communities. People use social media to stay in touch and interact with friends, family, and various communities.

SOCIAL MEDIA AND HEALTH CARE

Health care is not immune to the ever-growing influence of social media. In India, Facebook, YouTube, and WhatsApp are the most popular social media apps used by health-care professionals. Often, these sites are used for the dissemination of health information in a faster and real-time manner. Many informative videos are uploaded by health-care professionals on these sites, which can be of much use for the common people. These sites are also being used for academic purposes – the content being shared is being used as a tool for the training purposes of the health-care students also.

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Clause 5.1 of the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 states that, “Physicians, as good citizens, possessed of special training should disseminate advice on public health issues.”^[3] Beyond doubt, such information provides awareness to the general public and is a mean to disseminate such essential information to a large population, in a faster way and in an economical manner. Even with the best of the intentions of the health-care professionals, such informative uploads may still be of concern.

One – they are often used as a medium of self advertisement. It must be kept in mind that Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 prohibits the same.^[3] Clause 6.1 of the act very clearly states that, “A physician shall not make use of him/her (or his/her name) as subject of any form or manner of advertising or publicity through any mode either alone or in conjunction with others which is of such a character as to invite attention to him or to his professional position, skill, qualification, achievements, attainments, specialties, appointments, associations, affiliations or honors, and/or of such character as would ordinarily result in his self-aggrandizement.”^[3] Further, clause 7.11 of the act clarifies that, “A physician should not contribute to the lay press articles and give interviews regarding diseases and treatments which may have the effect of advertising himself or soliciting practices; but is open to write to the lay press under his own name on matters of public health, hygienic living or to deliver public lectures, give talks on the radio/TV/internet chat for the same purpose and send announcement of the same to lay press.”^[3] As is clear from above discussion, the use of uploaded videos, etc., on social media for self-advertisement is violations of these regulations and may attract penalty.

Second – these videos or informative materials are never peer reviewed. So promoting them as a mean of preventive or treatment protocols or teaching aids is no less fraudulent. Third – such informative materials often are laced with presenters own opinion or his/her way of clinical practice and may be polarized.

As the major focus of this editorial is regarding uploading of patients’ image and clinical data on social platforms, it will be discussed in detail further.

RATIONAL OF UPLOADING CLINICAL DATA AND PHOTOGRAPHS

Conventionally, the sharing of medical images has been predominantly conducted through professional platforms in the form of seminars, conferences, paper and poster presentations, lectures, textbooks, and medical journals. With the explosion of the Internet and now social media, the dissemination of information is changing rapidly.^[4] Now, the social media has

become the part of the professional aid of the medical and health-care professionals, particularly so after COVID-19.

First and foremost reason of uploading patients’ pictures or clinical material on social media platforms obviously is to provide an opportunity to the connected health-care professionals and fellow clinicians to discuss the case in detail and get educated. The idea is obviously to have in-depth discussion and education.

Other reason is to let common people know about your expertise. The same may be true for fellow clinicians – to let them know about your field of expertise. Although doubtful, but sometimes, it is done under “indirect peer-pressure” also, particularly when clinical data and information are shared on institutional WhatsApp groups – as if a colleague has informed fellow institutional colleagues about a difficult case handled, now it’s my turn for the same!

Moreover, it is a matter of concern, if all these reasons fall under the self-advertisement clause discussed above, and if there are any norms stipulated by regulatory body in India about the same. Let’s examine the same.

REGULATORY PROVISIONS

As stated above, the Indian Medical Council (Professional conduct, Etiquette, and Ethics) Regulations, 2002 allows physicians to disseminate advice on public health issues. However, the same regulations bind the physicians with the secrecy clause and states that the registered medical practitioner (RMP) shall not disclose the secrets of a patient that have been learned in the exercise of his/her profession except under certain circumstances.^[3] Clause 7.17 of the regulations specify that, “A registered medical practitioner shall not publish photographs or case reports of his/her patients without their permission, in any medical or other journal in a manner by which their identity could be made out. If the identity is not to be disclosed, the consent is not needed.” None the less, almost all journals ask for patient written consent and publish the same in the published case report, even if patient’s identity is not disclosed.

Clearly, these regulations were notified in 2002 when social media were not in use and were last amended in year 2016 and have no mention about social media use. However, the drafted National Medical Commission RMP (Professional Conduct) Regulations, 2022, circulated on May 23, 2022 deals with the issue of social media in detail.^[5]

Although these drafted guidelines also allow a RMP to do public education through media without soliciting patients for himself or the institution; clause 19(B) states that, “A RMP shall not publish photographs or case reports of patients without their permission in any medical or another journal in a manner by which

Box 1: Salient features of “Guidelines for conduct of RMPs on Social Media” as per drafted National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2022.

1. RMPs can provide information and announcement on social media. However, the information should be factual and can be verified. The information should not be misleading or deceptive, nor should it exploit the patient’s vulnerability or lack of knowledge.
2. RMPs should avoid discussing the treatment of patients on public social media.
3. RMPs should not post patients’ photographs or scan images (CT/PET scans) on social media. Once an image is posted in social media, it becomes data that is owned by the social media company or the general public.
4. RMPs should not directly or indirectly indulge in the practice of purchasing “likes” or “followers”.
5. RMPs should not request or share patients’ testimonials or recommendations or endorsements or reviews in social media.
6. RMPs should refrain from sharing images of healed/cured patients, or surgery/procedure videos or images displaying impressive results under any circumstances.
7. RMP’s webpage should also follow the same guidelines as above.
8. Soliciting of patients directly or indirectly through social media is unethical.

their identity could be revealed.^[5] This is similar to earlier 2002 regulations, but clause 20 of the newly drafted regulations clearly asks the RMP to follow the prescribed guidelines for conduct on social/electronic and print media. Separate guidelines have been annexed with these regulations and salient points of the same have been highlighted in Box 1.

IMPLICATIONS

Let’s discuss some of these regulatory provisions and check their implications also. First – only factual information, which can be verified, must be posted on social media. Second – whatever treatment has been given to the patient should not be disclosed on social media. Third – patient’s photographs or even scan images should not be posted on social media. Even photographs of healed patients and in-procedure videos should not be posted/uploaded on social media. The point of focus here is – under no circumstances, which means even if patient’s identity is not disclosed. The matter of concern is that, once these pictures, videos are posted on social media such as WhatsApp and Facebook; they come in public domain and in open market. Then, they become data that is owned by social media platform or by the general public. Moreover, patients’ testimonials and reviews should not be shared on social media platforms as per these newly drafted regulations.

Using patients’ photographs, videos, etc., for educational purposes of students, in class WhatsApp groups must be seriously reconsidered after these drafted regulations are notified.

What will happen if these drafted regulations and guidelines are violated? These drafted regulations, through chapter 6 very clearly state that, “*Any violation of these regulations, or other applicable acts related to medical practice which are in force, shall constitute professional misconduct.*”^[5]

WAY-OUT

Avoid posting patient-related information including photographs, in-operation videos, and testimonials on social media platforms and try to publish case reports in journals. Peer-reviewed Institutional journals can be one option. This way, interesting information will be shared with larger population of subject-experts, as most of the journals are available online also, nowadays. Moreover, the case report will be peer-reviewed and will be more valid and authentic.

Still, if there is any need to post pictures, videos on Institutional WhatsApp group for in-house, urgent discussion, the option “View Message Once” must be clicked before posting. This option comes with an added advantage nowadays, as no one can take screen-shot of such pictures, besides viewing it only for once.

But all said and done, the best option is to use journals for publishing case reports. It adds to one’s academic scholarship credentials also. Second – avoid using pictures, videos, etc., posted on social media for self advertisement, and never publish such material on social media “under indirect peer pressure”!

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Disclaimer

The objective of this editorial is to make registered practitioners aware about the current and drafted regulations, as issued by regulatory bodies regarding use of social media. Do refer detailed guidelines / regulations / codes before making an informed decision.