## Feature Article

**Web Reputation: Setting A Patient’s Expectations**  
Learn how a healthcare provider can effectively manage his/her online presence.  
By: Linda Hay, JD and Anne Oldenburg, JD

## Board Message

**The Year in Review**  
A message from the Chair on how OMSNIC continues to protect and defend the Specialty.  
By: James Q. Swift, DDS

## Patient Management

**Smile, You Are On Candid Camera**  
Learn some risk management tips to consider regarding the use of mobile devices in the office, and their potential impact on the doctor-patient relationship.  
By: Lolade Mitchell MSN, MPH, RN

## Practice Management

**Responding To Negative Online Reviews**  
Consider the following tips before deciding to respond to a negative online review.  
By: Sharde Woods, RDH

## Closed Claim Summary

**Should You Text With Patients?**  
Review a claim where text messages between a doctor and patient were entered into evidence.  
By: Diana J. Mosher, JD

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**Introducing the JAWS Society**  
An introduction to the JAWS Society, a national society of oral and maxillofacial administrators, working with OMSNIC in a collective effort to improve patient safety and management of the OMS practice.  
By: Keith Miller

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- **OMS Guardian To Be Published Quarterly**
- **RM Courses**

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**Technology in the OMS Practice**  
As the use of mobile devices and the internet continue to pervade every aspect of our lives, new possibilities, as well as new challenges and risks arise for the OMS practice. This issue discusses the impact on the OMS practice and offers risk management strategies to help navigate the evolving world of technology.
Web Reputation: Setting A Patient’s Expectations

As the use of the internet continues to pervade every aspect of our lives, its positive and negative impact becomes more defined. Although practitioners and practice owners can gain great benefit from the use of websites, social media and review sites, there can be potential for risk or harm. That harm can occur swiftly, be widespread, and have lingering effects. An ongoing awareness of a practice or practitioner’s web presence, good or bad, is essential to good risk management.

Web presence, for purposes of this article, includes three main forms: websites which affirmatively display the practice and practitioner by providing controlled content; social media sites which provide some controlled content, but invite some uncontrolled content; and review or ratings sites which invite uncontrolled and purportedly objective content. All of these combined create a web presence that both patients and colleagues can typically access. In this context, the goal of good risk management is to manage your website presence to emphasize the positive, downplay the negative, and set reasonable patient expectations.

Web Presence

The first step is to regularly monitor your own web presence. Perform regular searches through different search engines on your practice and your practice name to see what the search reveals. Does your own website appear first? Is the information outdated? Does a poor review or rating appear prominently? In addition, check listings on various sites where your practice or license is registered, such as your state disciplinary site or your state corporate registration site, to ensure that information is accurate and updated.

Your web presence, and what it shows about you, is critically important. It is likely the first thing that any prospective patient, disgruntled patient, lawyer, insurance carrier, disciplinary body and/or competitor will review when evaluating you and your practice for professionalism, competence, qualifications, and overall philosophy of care.

Inaccurate information on the web can be detrimental to your license, your practice, and your reputation. If you find such information, review it and investigate how to correct it. There is, unfortunately, no one simple answer to explain how to fix any inaccuracies or errors, as each site or issue is different. Some things may be able to be changed, some not, and some may need additional expertise to effectuate a change. Investigate to determine how changes can be made because some inaccuracies or problems may be more minor and some more serious. The level of time and expense is an important factor in deciding how to address an issue. However, that knowledge in advance is truly a large part of winning the battle.

Websites

Next, consider content that you, the practitioner, control. Do you know what your website says about your practice? Do you review every aspect of the content posted and how frequently it is updated? If not, you must do so. Your own website not only creates a sense of you and your practice for patients, but it can also create a standard you are held to in any claim made against
Web Reputation: Setting A Patient’s Expectations

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If your website honestly, accurately, and thoughtfully portrays your practice, then patients will have reasonable expectations concerning your level of care, expertise, and philosophy.

The practitioner has the ability to provide the building blocks for a good and solid web reputation and presence by thoughtful creation and regular review of their own website. It is important to convey the right message and create reasonable and accurate expectations.

Social Media

As for social media sites, most notably Facebook, the practitioner should be very wary of establishing a presence which invites uncontrolled content, mixed in with a format that invites commentary by the practice. This combination of invited and uncontrolled content can provide a ready format for back and forth public mudslinging with a patient or other person that can result in HIPAA violations, an unwanted doctor-patient relationship, or a knee-jerk and emotional response. These can all be problematic for the practice or practitioner, and a misstep in any of these areas can exacerbate, escalate, and publicize a dispute very quickly.

Online Reviews

Finally, rating sites share many of the issues seen with social media sites. These include clinical and professional sites such as Healthgrades, to more casual review sites, such as Yelp. Ratings sites are more direct in highlighting positives and negatives, often without explanation or detail as a basis, if the reader bothers to read any explanation at all. They are also more likely to invite a quick and emotional response by the practitioner. The practitioner must fight this urge to respond. Most often, silence is the better part of valor, and an anomaly of a rating can often be lost in the shuffle. In addition, be aware there may be HIPAA concerns when addressing a patient on the internet. Repeated and voluminous negative reviews should be a clear sign to the practitioner that there may be issues to resolve. Lawsuits related to known problems are also more difficult to defend and provide a basis for a plaintiff’s lawyer or a disciplinary board to claim a pattern and practice of bad care.
Seeking Out Assistance

In addition to some of the suggestions above, the practitioner can use other resources if he or she finds that there is a serious issue and is unsure of the steps to take. One simple step is to contact OMSNIC’s Patient Safety and Risk Management department to seek guidance. A risk manager can use resources, such as outside counsel, to assist. Use of other outside consultants may also be in order as well. Working with a web consultant to prepare a professional site, with the ability to properly maintain that site on a regular basis would be helpful. Investigation of websites and the web presence of colleagues and competitors can also be enlightening, to see what seems to work well and not so well. If needed, you can seek consultation from those who specialize in how to counteract a negative web presence or poor online reputation.

Maintaining a positive web presence is an extremely important part of marketing the practice, maintaining good patient relations and optimizing patient satisfaction. The prudent practitioner will also, however, always be directly involved in the oversight of this presence, and will weigh these goals always with those of good risk management and managing reasonable patient expectations.

Helpful Resources

**e-Learning Center: ALL 203 - Managing Social Media Risks**

This on-demand course available in the OMSNIC e-Learning Center discusses best practices for incorporating social media into your practice, how to mitigate the risks of social media, and strategies on how to handle issues should they arise.

**Page 9: Responding to Negative Online Reviews**

See the article on page 9 that offers tips before deciding to respond to a negative online review.
The Year in Review

James Q. Swift, DDS - Chair of the OMSNIC Board

Dear Colleagues,

As this is our final OMS Guardian issue for 2016, I get the opportunity to communicate with you regarding the past year. I am pleased to share important updates on how OMSNIC continues to champion the specialty.

One of OMSNIC’s core purposes is to protect and defend OMS. We do this so our policyholders can focus on what they do best and enjoy most—take care of patients. Your OMSGuard policy is there to provide you with peace of mind and the knowledge that OMSNIC will be there if and when you need us.

It has been an active year for the OMS profession for several reasons. For example, we have seen the efforts of national publications distort the frequency of sedation and anesthesia related complications. What we know to be infrequent occurrences of incidents and complications in the OMS office are now public news airing on primetime. This wave of media coverage may create a negative impact on patients, who may decline needed procedures based on their fear and misinformation. These types of claims continue to be difficult and expensive to defend.

We know that it is our objective and responsibility as surgeons to provide technique and procedures that are supported by a culture of patient safety in our practices. Each component of our practice, including the patients themselves can contribute to our efforts to minimize risk. We realize that foresight may be unclear and challenging. We also recognize it may be difficult to predict which patients will have challenges with a procedure, and see more patients presenting with medical co-morbidities such as diabetes and heart disease. Plaintiff’s experts who do not understand this will argue, with the benefit of hindsight, that the OMS’ work was below the standard of care. Remember that while after the fact opinions tend to be plentiful; in many situations they are inaccurate.

With this in mind, OMSNIC remains committed to supporting and promoting safe patient care and treatment. We have been providing risk management services for our insureds since the Company’s inception. Historically, risk management was focused on managing the risk of allegation of malpractice and how to cope with a claim. However, risk management has evolved and expanded to now assess the patient’s risk of procedure and provide tools and techniques to mitigate that risk and support better patient outcomes.

Overall, adverse outcomes with OMS procedures are infrequent. The Company has utilized its 27 years of cumulative data and claims experience to identify common risks which are then communicated and explained to members in the hopes of increasing patient safety. To that end, OMSNIC has rebranded its risk management education program and resources to “Patient Safety..."
The Year in Review

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and Risk Management” to reflect the patient safety focus.

A strong emphasis on patient safety in oral and maxillofacial surgery must be continuous as we face significant changes in the way we practice, influenced by conglomerated practice models and payer systems, as well as less individualized and more distributed responsibilities and alternate care providers.

We continue to work with exceptional surgeons and exceptional OMSNIC staff. We have established initiatives to help manage claims that are increasing in frequency including nerve injury, failure to diagnose and issues associated with anesthesia and sedation. These initiatives will aid us in our educational efforts and in defending claims.

Please know that we are extremely gracious of all of the suggestions, ideas and comments from the many oral and maxillofacial surgeons that serve on our committees. This input helps OMSNIC remain current on issues affecting the profession. Ultimately, this input allows us to provide our best service to you. OMSNIC is a company of surgeons, committed to providing services to surgeons to facilitate the practice of surgeons.

Please enjoy a safe and happy holiday season.

Reminder: The OMS Guardian Will Be Published Quarterly

Since the Company’s inception, risk management has been a fundamental service available for OMSNIC policyholders. We believe regular communication with our policyholders on this topic helps improve patient safety and mitigate the risk of litigation. The OMS Guardian is one of the many ways in which we share patient safety and risk management information with you. Yet, in this fast-paced, technology-driven world, it can be a struggle to keep up with multiple publications in spite of knowing the value of some of the information we receive. With that in mind, OMSNIC will offer you a more time-efficient way to receive our patient safety and risk management information.

Beginning next year, the newsletter will be published quarterly, with the next issue arriving in your inbox in February. The OMS Guardian will continue as a comprehensive newsletter, focused on contemporary topics specific to the OMS practice. In the periods between, we will send brief Patient Safety and Risk Management related emails that focus on a single topic in an easily consumable format. Our goal is not to reduce the information we share with you, but to improve the way in which we deliver it. Also coming in early 2017, OMSNIC will have an online presence on both Twitter and LinkedIn, where we will communicate important information with you on a regular basis.
Smile, You Are On Candid Camera
Lolade Mitchell, MSN, MPH, RN Risk Manager

You notice an escort recording your drowsy patient as she recuperates in the open recovery suite. The patient just had major dental work completed and her face is pretty swollen. What do you do? The subject of camera use in the office is not a new issue. As our society’s use of social media expands and the ability to share life’s moments in an instant becomes the norm, issues with camera and cell phone use in the OMS office will increase.

The Post-Operative Issue
Requests to videotape actual procedures are rare, but more and more patients are openly capturing post anesthesia emergence on their mobile devices and sharing these situations almost immediately on the internet. Though good judgment would dictate that this is not a good time to take a picture or videotape someone, the truth is it happens, and it may have already happened in your office. With good intentions, you or your staff might have requested the individual cease, but short of confiscating cell phones when patients and families are in the office, there is no surefire way to ensure it is not happening. Consider developing an in office policy regarding cell phone usage in patient care areas, identifying what should be done when it is observed (e.g. patient is asked to put the cell phone away or use it outside) and posting notices that briefly inform the patient of the office policy concerning usage of mobile devices. An example notice can include:

OFFICE POLICY
Due to federal and state HIPAA Privacy & Confidentiality Regulations, no cell phone use is allowed in patient care areas. This includes using your device for phone calls, photos, videotaping and recording. Thank you for your cooperation and respect for our patients’ and employees’ privacy.

To assist in the enforcement of the policy or office mandate, it is important that all office staff are trained or equipped with both verbiage to alert patients and/or family members who are “caught” engaging in the activity, and what next steps to take should the need arise.

The Pre-operative or Intra-operative Issue
In recent years, the extent of the use of technology in the healthcare setting has expanded from simple video recording and picture taking with a mobile device, to inconspicuous audio recording using a smart watch or cell phone. More and more healthcare providers are falling victim to having their conversations recorded and either displayed on social media or even worse,
in court. The recent story in the Washington Post that describes the Anesthesiologist who was recorded during a patient’s colonoscopy highlights some of the legal ramifications that can occur if defamation is identified in such recordings.

So what can a doctor do? Although there are a few actions that can be taken, it is important to understand that apart from searching every patient as they enter the operatory, there is no foolproof way to ensure patients are not recording you without your knowledge. Considerations for managing this specific issue can include:

• Developing similar office policy as stated above, that explicitly states recording devices and/or recording without the consent of the all parties involved is prohibited. If this policy is enacted, it should be enforced when it is identified by staff.

• Informing all patients that enter the operatory that phones need to be turned off as they might be distracting to the doctor during the procedure. This can be included as an item to assess on a surgery or time out checklist and can be adapted for every patient to ensure its consistency.

Conclusion
Technology advancements highlight the need for OMS practices to adopt new protocols and procedures to address the unauthorized use of devices in the health care setting. Training your staff on such protocols and procedures will ensure consistent enforcement. Despite these measures, it is advisable to assume that any patient could be recording what is happening in your office.
Responding to Negative Online Reviews
Sharde Woods, RDH Assistant Risk Manager

Online reviews have become a normal part of the healthcare experience. Positive reviews may boost a doctor's reputation and business, while negative reviews may damage a doctor's credibility and be detrimental to the success of his/her practice.

Although it is a good idea to stay abreast of your office's Webutation, you should ask yourself the following questions before typing a reply to a negative review:

Questions To Consider Before Responding

Does the intended reply violate HIPAA?
If it reveals personal information about the patient, or even acknowledges a patient-doctor relationship, it may be a violation of HIPAA. Remember, just because a patient acknowledges a relationship with your office does not give you or your office staff the right to respond in kind.

Is the patient's review defamatory?
If it is, you may be able to get the review removed or have the option to hide the review.

Can I identify the patient through the review and are they currently a patient of the practice?
If so, it may be advantageous to contact the patient through their pre-identified HIPAA approved method to resolve the matter. There may be situations where contacting the patient will likely not resolve the matter. If this is the case, it is not advisable to contact the patient.

Can the message be responded to privately or only publicly?
If the person allows direct messaging, a generic response that de-identifies the patient can be posted privately in response to the review. If direct messaging is not allowed, the generic phrase may be posted publicly.

Sample generic phrase: “We appreciate your feedback and are sorry that you feel you did not receive the best service possible from our practice. Our office strives to provide each patient with an excellent experience, and we work hard to constantly improve our practice. Please contact our office to provide us the opportunity to address your specific concerns.”

Risk Management Tips

1. Do not respond while upset because of the potential to implicate yourself/admit fault or say something that might be considered threatening by the patient.

2. Do not engage in a back and forth with the patient over online review sites. If you receive a response to your reply online, encourage the patient to continue the conversation over the phone or in person.

3. Consider encouraging satisfied patients to leave reviews. This can help overshadow an occasional negative review.
Should You Text With Patients?
Diana J. Mosher, JD - Claims Specialist

The Background
A 46 year old woman presented to our insured's office for extraction of several teeth with implant placement. The patient was known to the insured, since she had been a patient in the past. In fact, they had developed a friendship and would see each other socially. On the day of treatment, while repositioning his hand during surgery, the insured inadvertently cut the inside of the patient’s lip. He sutured the 1 inch laceration and the surgery was completed without further incident.

Here Is What Happened
The patient did not return to the insured for removal of the sutures or follow up. She sought treatment from another OMS and was subsequently referred to a plastic surgeon for assessment of the wound.

The personal relationship became adversarial once the injury occurred. The patient began sending repeated text messages to the insured accusing him of malpractice. The insured responded to each of the texts. In one of the texts he apologized for the “accident” and tried to explain how his hand “jumped.” The insured offered to reduce his fees for the procedure “to make it right.” He even sent flowers with a note apologizing for what had happened.

The Outcome
The text messages were used as leverage by the Plaintiff’s attorney to show that the injury was unexpected and was not discussed as a possible risk of the procedure. The insured’s reference to this event as an “accident” and explanation that his hand “jumped” made the case difficult to defend. Ultimately, the case was settled before trial.

What Can We Learn From This?
Personal relationships with patients can add to the complexity of engaging in text message communication. Remember, once you hit “send,” the message cannot be retracted. In fact, that message and the entire dialogue now have the potential to be admitted into evidence during legal proceedings. They can be saved, shared with a patient’s attorney, and used against you in a court of law.

Risk Management Tip
Text messages should not be used to justify treatment plans or theorize how an injury may have occurred. Read your text before sending it and ask yourself, “how would this sound if read to a jury?”
I think all of us would agree that oral and maxillofacial surgery is a unique business type with its own set of challenges. As a result, many administrators who work in this field have found it difficult to find assistance in the traditional manner. That is why the JAWS Society was created eleven years ago.

The JAWS Society is a not-for-profit organization created by oral surgery administrators and managers, and run by these same individuals. We have no full time employees at this time. Our membership currently stands at 240 and we plan to grow to 1,000 members in the next few years.

The main benefits that JAWS provides are information and networking. Our members are always willing to assist others in this industry when they face issues they have not previously encountered. We maintain a very robust member forum on our website (www.jawssociety.org) where members can post questions to the entire group and share their answers and experiences. We also hold an annual conference each spring and offer a variety of speakers who help educate our members on topics ranging from personnel management to HIPAA compliance. Our last conference was held in Miami in April of 2016 and drew over 140 members.

Our next step is to provide more direct education programs and industry standard benchmarking data for our members. We began this process with a benchmarking survey this past year that focused on staffing needs and costs by geographic region. We anticipate extending this survey to include financial as well as production and marketing data. This information will be available exclusively to our members.

Associated with our benchmarking efforts we are developing a relationship with OMSNIC to provide education opportunities and information for our members. We have found OMSNIC to be an excellent partner in this endeavor and hope to help them with articles and postings from the administrative perspective of an oral and maxillofacial surgery practice. OMS are strongly encouraged to have their administrative team register for OMSNIC’s website to access the many resources provided; including an extensive library of patient safety and risk management materials.

As one of the founding members of the JAWS Society, I can easily assure you that it has been an enormous help for me and my practice. I have worked in an OMS practice for over seventeen years and still learn a great deal every year from my fellow JAWS members. The networking we provide through our website and at annual meetings is priceless, and I am always impressed by the high level of experience, knowledge, and ingenuity that our members bring to our meetings.

If you are interested in learning more about the JAWS Society, please visit our website. We have a link for new members (managers and administrators) on our home page (click “Join JAWS”) as well as information about the upcoming 2017 spring conference to be held in Austin, Texas. If you have questions about our organization, feel free to contact me at keith@iomsa.com.
OMSGuard Patient Safety and Risk Management Education

A wealth of education, training, and other custom resources are available. Member policyholders and staff can take online courses or attend live seminars for CE credits and premium discounts. Login to omsnic.com to access these resources.

e-Learning Center

This is a robust risk management education library that provides OMS and staff with courses on demand that are free of charge and designed to be completed at your own pace. The curriculum covers patient safety and risk management as well as emerging issues. Content is written and presented by OMS and legal and insurance experts well versed in oral and maxillofacial procedures.

Get CE Credit: Earn CE credit upon successful completion of any e-Learning Center course.

Live Seminars

In a collaborative learning environment, OMSNIC’s team of speakers integrates case examples with nonclinical issues commonly seen in OMS claims. Check our online calendar for an upcoming seminar in your area and registration information. Member policyholders who attend a live seminar earn a renewable 5% risk management premium credit that is applicable for three policy periods.

Can’t Attend a Live Seminar? RMC 413, available in the e-Learning Center, is a recorded version of the live seminar. Complete RMC 413 to earn 4 CEs and the 5% premium credit.

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