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Litch's Law Log

What to do about a Negative Internet Review?

With the ubiquitous presence of the Internet on computers and phones and other electronic devices, one democratic impact is that anyone can be a restaurant or movie critic. Or rate cars or hotels. You name it, there's probably a website for rating just about every product or service imaginable. But what about when a parent decides to post a review about your practice? And what if the review is negative and inaccurate? What are your options?

Question 36 in the ADA's publication *The ADA Practical Guide to Frequently Asked Legal Questions*, has a good summary of your legal options. Here are the highlights:

- It is truly very annoying! Especially because the person posting the review is not bound by privacy and confidentiality laws (HIPAA), but you as the health care professional are so bound.
- If you consult an attorney, make sure it is someone with expertise in Internet-related law.
- The website may be immune from liability for the content of material posted by third parties. However, under the terms of the website's own content posting guidelines, you may have grounds to request them to take down the posting as being contrary to such guidelines. This may be particularly compelling if the posting is potentially libelous.¹

- If the person posted the comment anonymously, it may be costly and time consuming to attempt to identify the person.
- Filing a lawsuit could backfire by creating more negative publicity about your practice than if you simply ignored the comment. Further, damages to reputation are difficult to prove.
- You may be able to feature your practice's website more prominently via paid postings on search engines, or even on health care provider ratings sites.
- There is certainly no legal or ethical objection in asking your satisfied patients/customers to submit positive reviews of your practice to ratings sites. Or, you could have internal evaluation forms and encourage parents/guardians to fill them out for your own practice evaluation review. In this manner, you could discuss negative feedback with the parent/guardian before such individual feels compelled to post something on the Internet.

There are two additional legal strategies that have been suggested by some:

1. Have parents/guardians sign a waiver or agreement that negative reviews will not be posted on the Internet; or

2. Have parents/guardians sign a copyright assignment granting all intellectual property rights to the dentist for any reviews that might be written. Therefore, if a negative review is posted, the dentist could legally remove the harmful information from the website. This approach is actually being promoted by an organization called Medical Justice (<http://www.medicaljustice.com/>).

However, as this is an evolving area of law, it cannot be said with certainty that such agreements would be enforced if challenged in court. In fact, your friendly legal columnist seriously doubts strategy number 2 above is viable, because: a) courts are likely to view such a contract as unconscionable, and b) it's not even clear that someone can assign, without any consideration, rights to intellectual property that has not yet even been created.

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¹Defamation is an intentional false communication, published or spoken, that injures another person's good name or reputation. Libel means to defame or harm one's reputation in writing. If the defendant is able to show that the defamatory statement is essentially true, then the plaintiff's claim for libel will fail.