

HHS CIVIL RIGHTS OFFICE ENTERS SETTLEMENT WITH DENTAL PRACTICE OVER DISCLOSURES OF PATIENTS' PROTECTED HEALTH INFORMATION

by C. Scott Litch COO and General Counsel



The legalities and practicalities of dentists responding to negative online reviews were discussed in previous LLL columns in 2019 and 2010.¹ A recent settlement highlights the challenges in responding to such reviews without violating the Health Insurance Portability and Accountability Act (**HIPAA**).

The U.S. Department of Health and Human Services Office for Civil Rights (**OCR**) received a complaint in November 2017 that New Vision Dental (a California dental practice) improperly disclosed protected health information (**PHI**), including patient names, treatment, and insurance information, on social media when it responded to online patient reviews.

On Dec. 14, 2022, OCR announced that B. Brandon Au, DDS, Inc., d/b/a New Vision Dental (New Vision Dental), paid \$23,000 to resolve the investigation into improper disclosure of PHI in response to negative online reviews.² In addition to the monetary settlement, the dental practice also agreed to a corrective action plan that includes two years of monitoring to resolve its potential violations of HIPAA. In case you're wondering, this is not a pediatric dental practice.

The announcement included the following statement from OCR Director, Melanie Fontes Rainer:

"This latest enforcement action demonstrates the importance of following the law even when you are using social media. Providers cannot disclose protected health information of their patients when responding to negative online reviews. This is a clear NO. OCR is sending a clear message to regulated entities that they must appropriately safeguard patients' protected health information. We take complaints about potential HIPAA violations seriously, no matter how large or small the organization."

For strategies and guidance on responding to negative reviews, AAPD members are directed to our online social media resources for pediatric dentists, which includes the AAPD **Social Media Toolkit**.³

The AAPD will also be monitoring implementation of the following resolution (304H) adopted by the 2022 ADA House of Delegates:

"Resolved, that the appropriate ADA agencies curate existing social media reputation management content to develop a Reputation Defense Toolkit to help dentists with the appropriate reaction to social media postings and reviews that are misleading or defamatory, to make the Reputation Defense Toolkit available as a member benefit and to initiate a plan to update the Toolkit as needed, and be it further

Resolved, that the ADA enter into discussions with social media platforms to assess the feasibility of revising user agreements to prohibit misleading or unverifiable posts and reviews, which cannot be responded to due to HIPAA limitations, and creating a fair and reasonable process for victims to remove misleading or defamatory posts."

For further information contact Chief Operating Officer and General Counsel C. Scott Litch at (773) 938-4759 or slitch@aapd.org.

This column presents a general informational overview of legal issues. It is intended as general guidance rather than legal advice. It is not a substitute for consultation with your own attorney concerning specific circumstances in your dental practice. Mr. Litch does not provide legal representation to individual AAPD members.

¹ <https://www.aapd.org/globalassets/media/advocacy/lll/litchs-law-log.pdf>; <https://www.aapd.org/assets/1/7/4302.pdf>

² <https://www.hhs.gov/about/news/2022/12/14/hhs-civil-rights-office-enters-settlement-with-dental-practice-over-disclosures-of-patients-protected-health-information.html>

³ <https://www.aapd.org/resources/social-media/> including <https://www.aapd.org/globalassets/assets/1/7/socialmedia101.web.pdf> which will be updated periodically