

<b>Kansas State Board of Healing Arts</b>	
<b>Policy Title:</b> Social Media Use for Healthcare Professionals	<b>Policy Number:</b> #23-01
<b>Author:</b> General Counsel	<b>Effective Date:</b> December 9, 2022
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**PURPOSE:**

Social media use and its scope of application continues to grow and evolve. The Kansas State Board of Healing Arts (“KSBHA” or “Board”) recognizes appropriate social media use can provide many benefits for healthcare professionals and their patients, including facilitating communication and exchange of information among healthcare professionals about recent research findings and treatments and generally improving and supporting patient care.<sup>1</sup> However, public engagement on social media by healthcare professionals, particularly when posting comments or providing original information, creates risks for practitioners and patients. Inappropriate use of social media can result in ethical violations, loss of trust in the medical profession, and reputational damage to the profession. The KSBHA is committed to promoting responsible and ethical social media use by healthcare professionals.<sup>2</sup> This policy is intended to be a guidance statement under K.S.A. 77-438.

**AUTHORITY:**

K.S.A. 77-438

**DEFINITIONS:**

1. **Social Media:** Forms of electronic communication (including website and applications) that enable users to create or share content or to participate in social networking.
2. **Cyberbullying:** Harassment or bullying occurring online or through electronic means.
3. **Licensee:** A healthcare professional licensed by the KSBHA to practice their profession.

**POLICY:**

While this policy primarily addresses licensees’ professional use of social media, licensees should always adhere to their professional and ethical responsibilities, including situations that may seem

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<sup>1</sup> As this is a constantly evolving area of technology, the Board may revisit this policy as needed.

<sup>2</sup> FSMB Ethics and Professionalism Committee, *Social Media and Electronic Communication (2019)*, available at <https://www.fsmb.org/siteassets/advocacy/policies/social-media-and-electronic-communications.pdf>.

to be outside of the traditional clinical sphere. Many of the ethical principles articulated in this policy may be applicable to both professional and personal uses of social media.

Licensee ethical and professional standards which apply to in-person interactions also apply to online or social media interactions. Licensees should carefully consider the purpose and potential intended and unintended effects of their comments or communications prior to posting.

### **Communication Between Practitioners and their Team Members**

Social media can facilitate the provision of patient care and may provide opportunities for professional networking, collaboration, research, and professional development.

Licensees must never include Protected Health Information (“PHI”) or Personally Identifiable Information (“PII”) on social media platforms without the express written consent of the patient. Prior to accepting such consent, a licensee must properly explain the risks of including PHI and PII on social media so that the patient fully understands such risks and is able to provide fully informed consent. Licensees must limit the scope of information included online solely to what was consented to by the patient. **The best practice is to avoid posting any pictures or videos of or about specific patients.**

When communicating with other healthcare professionals in public or closed electronic mediums, licensees should exercise discipline, self-control, and maintain civility in their engagement. The same principle holds true in situations where communication takes place anonymously. Cyberbullying and all forms of online harassment among healthcare professionals is never acceptable.

### **Communication Between Practitioners and Patients**

Licensees should not exchange PHI or PII with patients on social media platforms. Such information should only be exchanged electronically between licensee and the patient through a HIPAA-compliant Electronic Health Record (“EHR”) portal, which can offer a high degree of protection for PHI and PII. Use of secured patient portals can also ensure that communication between the licensee and the patient remains professional and related to the medical care.

Where electronic communications occur between licensee and patients through formats other than social media (e-mail, text messaging, HIPAA-compliant portals, etc.), licensees must maintain professional standards, guard patient privacy and personal information, and provide the same standard of care<sup>3</sup> as they would during in-person encounters.<sup>4</sup>

When licensees delegate communication duties, it is important that the individual communicating

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<sup>3</sup> A licensee has a duty to use the learning and skill ordinarily used by other members of that same field of medicine in the same or similar communities and circumstances. In using this learning and skill, the licensee must also use ordinary care and diligence. Pattern Jury Instructions for Kansas – Civil 4<sup>th</sup>, 123.01, Duty of Health Care Provider (2021).

<sup>4</sup> While electronic communication outside of social media platforms demands the same professional and ethical standards as social media, formats such as e-mail and text messaging will require licensees to be particularly aware of issues such as evolving patient expectations of immediate responses to queries, meeting the standard of care where licensee provides medical advice or treatment, as well as the need to safeguard patient information (e.g., text messaging is generally not HIPAA-compliant).

to the patient or public, is transparent about who is responding or posting to a social media feed. Patients should not be misled into thinking that they are communicating with the licensee directly when this is not the case.

Licensees should remind patients that social media should not be used in health emergencies and that in case of an emergency, patients must call 911 or visit a hospital's emergency department.

### **Privacy Settings on Social Media Platforms**

When utilizing social media, including for professional purposes, licensees have a responsibility and duty to become familiar with the settings and features available used on any social media platform and how to tailor privacy settings based on the demands of a particular situation.

**It is unlikely that true online privacy exists.** Information can be captured, leaked, or shared by anyone viewing the content. Even the strongest levels of encryption should not be considered completely secure.

### **Looking Up Patients Online**

Information about patients' professional and personal lives may be easily accessible online and licensees may be tempted to seek out such information. While pertinent information relevant to patient care may be obtained in this manner, such activity creates risks of unprofessional behavior.

Patient information obtained online may be incomplete, inaccurate, and misleading. Licensees should not act solely based on patient information found online. Prior to searching for patient information on social media, the purpose of such activity should be considered. At times, a licensee may be seeking information related to provision of care that the patient cannot provide. In such instances, the best practice is to seek consent from the patient when possible.

### **Social Media for Marketing**

Social media has become a common marketing tool for licensees to advertise their practice, expertise, or treatments offered. State and federal law may apply. Under the Kansas Healing Arts Act, an "advertisement" is defined as "all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services." K.S.A. 65-2837(d). Licensees must avoid making deceptive, false, or misleading statements online about themselves, their training, skills, areas of specialization or certification, treatments offered or expected outcomes.<sup>5</sup>

Licensees should consider potential conflicts of interest and transparency when advertising online. Licensees should be cautious when commenting on the posts of others and endorsing or "liking" content posted by others. A "like" on social media could reasonably be seen as an endorsement and may be viewed akin to a licensee posting the same content themselves.

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<sup>5</sup> Such conduct may be considered unprofessional conduct under the Kansas Healing Arts Act. See K.S.A. 65-2836, K.S.A. 65-2837, and other applicable laws.

## Accurate Information

Licensees may find that social media provides the opportunity to access and share a great deal of information. Whether sharing information or consuming information online, licensees should check the veracity of information they are posting or obtaining, even when communicating with other health care professionals. Licensees should also check the accuracy of information obtained online prior to acting upon it or reposting it.

## Guidelines and Recommendations

1. Do not disclose individual identifiable patient health information or post images or videos online without the express written consent of the patient. **Best practice is to avoid posting any pictures or videos of or about specific patients.**
2. Maintain appropriate professional boundaries with patients and their surrogates and colleagues at all times whether online or in-person.
3. Turn down friend requests from patients or their family members to connect on social networking sites.
4. Comport yourself professionally even when communicating or posting in a personal capacity.
5. Do not engage in cyberbullying.
6. Consider all online content to be open and accessible to anyone. And consider any social media post as permanent, even after it has been deleted.
7. Do not provide medical advice to specific patients online unless this is done via a secure patient portal of a practice or institution.
8. Information provided should be truthful, not misleading or deceptive, and should be verified and supported by current literature and standard of care.
9. Identify yourself and your credentials. Do not misrepresent your training or expertise.
10. When marketing and advertising, be sure it complies with federal and state law. Consider seeking legal counsel for advice.
11. Be transparent about any conflicts of interest.
12. Pause. Think twice before posting.

Approved by the Kansas State Board of Healing Arts this 9<sup>th</sup> day of December 2022.

**KANSAS STATE BOARD OF HEALING ARTS**

*Susan Gile*

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Susan Gile, Acting Executive Director