

Should Physicians Use Patient No-Complaint Contracts?

Due to the presence of the Internet, patients displeased with a visit to their physician now have the ability to go online with complaints and posting -- often anonymously -- critiques of physicians, in much the same way travelers rate hotels on such Web sites as TripAdvisor.

In the past five years more than 40 Web sites, such as RateMDs.com, Angie's List, Yelp, DrScore and Vitals.com (motto: "where doctors are examined"), have begun reviewing physicians, providing information about one of the more difficult and important decisions consumers make routinely. As the number of these sites grows, questions about their usefulness, accuracy and fairness are also increasing. In some cases the anonymity of the Internet has collided with the rights of physicians who are constrained by laws that protect patient privacy.

As a defensive measure, some physicians are requiring patients to sign broad agreements that prohibit online postings or commentary in any media outlet "without prior written consent." Although critics call the documents gag orders, claiming they are both unethical and unenforceable, many doctors view them as an appropriate response to websites that not only ask detailed questions about a doctor's punctuality, availability, communication skills, office staff and the effectiveness of treatment, but also permit comments that may be untrue.

First Amendment Free Speech Implications

The First Amendment of the United States Constitution protects the right to freedom of religion and freedom of expression from government interference. Freedom of expression consists of the rights to freedom of speech, press, assembly and to petition the government for a redress of grievances, and the implied rights of association and belief. The Supreme Court interprets the extent of the protection afforded to these rights. The First Amendment has been interpreted by the Court as applying to the entire federal government even though it is only expressly applicable to Congress. Additionally, the Court has interpreted the due process clause of the Fourteenth Amendment as protecting the rights in the First Amendment from interference by state governments.

It clear that the First Amendment freedom of speech only applies to the government, and not to private individuals. Thus, physicians have the right to enter into private contracts with their patients to prevent patients from online postings or commentary in any media without prior written consent.

Benefits of No Complaint Contracts

No complaint contracts help physicians to safeguard their reputations in the era of the internet. Physicians are bound by privacy laws, making it extremely difficult to defend themselves against bogus online allegations. Requiring patients to sign a no complaint contract does not mean a physician is opposed to free speech, it is simply taking preventative action to guard against potential extremely damaging, false speech.

Physicians should consider whether the use of a patient no complaint contract would benefit their particular practice. For more information on this issue, feel free to contact the health care law attorneys at PVW Law.

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