

HIPAA and Social Media

Holly Schlenvogt

Privacy & Security Consultant / Owner

HRT Consulting, LLC

(262) 468-4291

hschlenv@hrt.consulting.com | <http://hrt-consulting.com>



Today's Webinar is Sponsored By:

Quarles & Brady LLP

GODFREY & KAHN S.C.



HIPAA COW Mission

- ▶ Assist HIPAA Covered Entities, Business Associates, and other interested parties in implementing HIPAA's Privacy, Security and EDI Standard Transaction provisions, as amended over time.
- ▶ Foster public education about HIPAA.
- ▶ Facilitate and streamline HIPAA implementation through identification of best practices.
- ▶ Reduce duplicate efforts among entities obligated to comply with HIPAA.
- ▶ Offer opportunities for partnering and collaborating between entities implementing HIPAA.
- ▶ Identify and evaluate new or difficult HIPAA interpretation issues.



Disclaimer

This document is Copyright © by the HIPAA Collaborative of Wisconsin (“HIPAA COW”). It may be freely redistributed in its entirety provided that this copyright notice is not removed. When information from this document is used, HIPAA COW shall be referenced as a resource. It may not be sold for profit or used in commercial documents without the written permission of the copyright holder. This document is provided “as is” without any express or implied warranty. This document is for educational purposes only and does not constitute legal advice. If you require legal advice, you should consult with an attorney. HIPAA COW has not yet addressed all state pre-emption issues related to this document. Therefore, this document may need to be modified in order to comply with Wisconsin law.



LEGAL NOTICE: HIPAA Collaborative of Wisconsin Content and Liability Disclaimer

The HIPAA Collaborative of Wisconsin (HIPAA COW) shall not be responsible for any errors or omissions contained in materials provided by HIPAA COW. All information is provided on an "AS IS" basis.

HIPAA COW MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT AND IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) REGARDING ANY INFORMATION CONTAINED IN ITS MATERIALS. THE USER OF THE MATERIALS SHALL ASSUME TOTAL RESPONSIBILITY AND RISK FOR THE USE OF THE MATERIALS. IN NO EVENT SHALL HIPAA COW BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOSS OF REVENUE, OR LOSS OF USE, ARISING OUT OF OR RELATED TO ANY INFORMATION CONTAINED IN THE MATERIALS PROVIDED BY HIPAA COW, WHETHER SUCH DAMAGES ARISE IN CONTRACT, NEGLIGENCE, TORT, UNDER STATUTE, IN EQUITY, AT LAW OR OTHERWISE.

The content of the materials provided by HIPAA COW is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that HIPAA COW is not engaged in rendering legal or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.



Today's Host



- ▶ **Holly Schlenvogt**
- ▶ Privacy & Security Consultant / Owner
- ▶ HRT Consulting, LLC
- ▶ (262) 468-4291
- ▶ hschlenv@hrt.consulting.com
- ▶ <http://hrt-consulting.com>



Today's Discussion Points

- ▶ Define Social Media
- ▶ Benefits of Using Social Media
- ▶ When Use of Social Media Becomes a HIPAA “Problem”
- ▶ How to Prevent “Social Media – HIPAA Heartburn”
 - Proactive tips to help prevent a breach



What is Social Media?



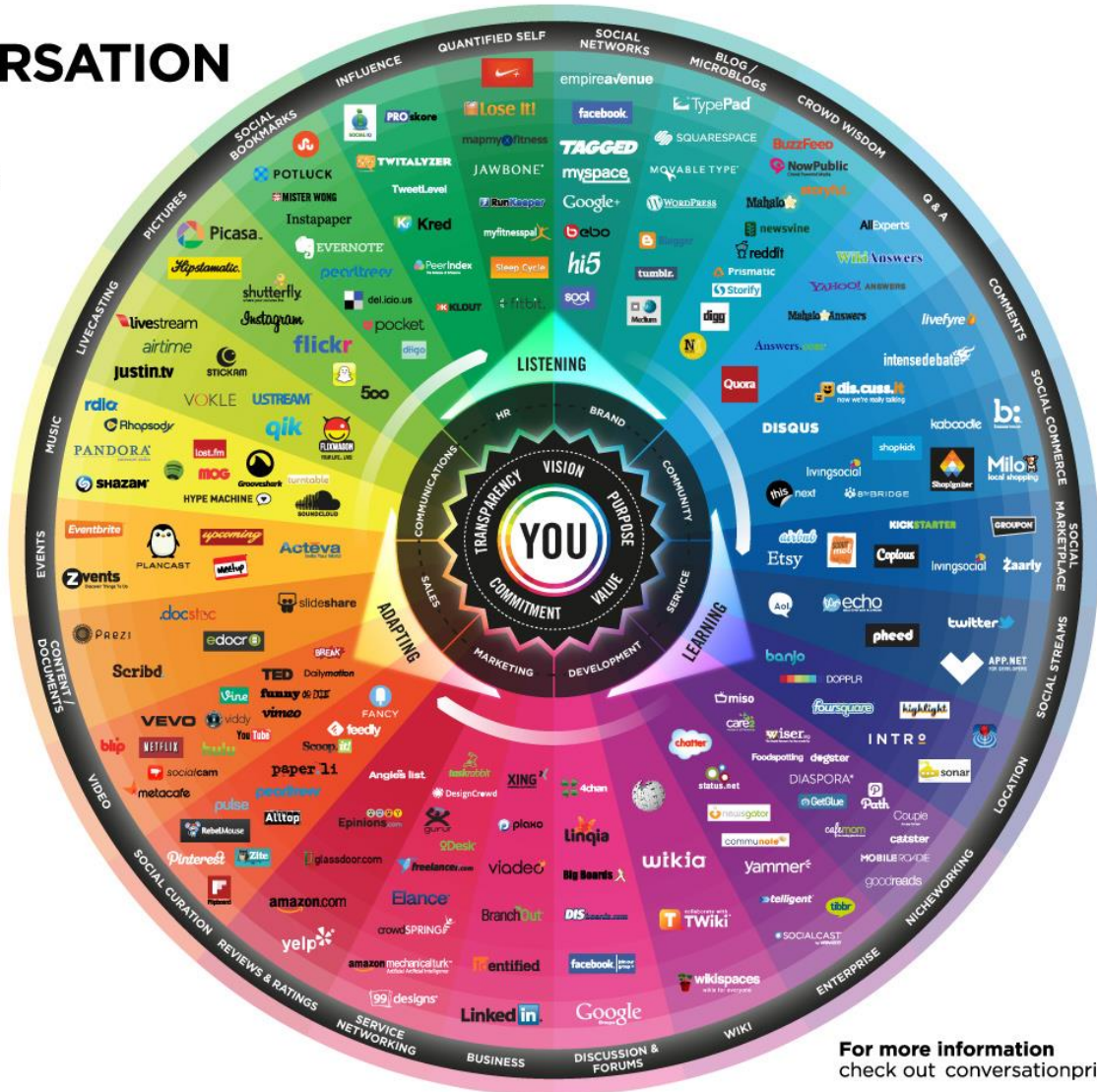
- ▶ “Computer–mediated tools that allow people or companies to create, share, or exchange information, career interests, ideas, and pictures/videos in virtual communities and networks”
- ▶ It “is becoming an integral part of life”
- ▶ “The means of interactions among people in which they create, share, and exchange information and ideas in virtual communities and networks”

Sources: Definition: https://en.wikipedia.org/wiki/Social_media
Other: <http://whatis.techtarget.com/definition/social-media>



THE CONVERSATION PRISM

Brought to you by
Brian Solis & JESS3



For more information
check out conversationprism.com

Source: http://itknowledgeexchange.techtarget.com/writing-for-business/files/2015/05/JESS3_BrianSolis_ConversationPrism4_WEB_1280x1024.jpg



Let's Talk About Social Media: What Do You Think About it?

Quotes from family, friends, and colleagues:

- ▶ “I think it’s awesome. I love twitter”
- ▶ “Why do you want to talk about that?”
- ▶ “I use Facebook all the time, not twitter, except once”
- ▶ “I don’t. I don’t use it”
- ▶ “A lot of people my age don’t care about the security side of things”



Patients Using Social Media



- ▶ To research & select a provider, facility, or organization
- ▶ Journal of General Internal Medicine study:
 - Almost 20% of patients reported trying to contact doctors through Facebook
 - Almost 40% through email
- ▶ 1 / 3 of consumers use social media for matters regarding their health

Sources: MalvernGroup, “HIPAA Checkup – Social Media”, June 4, 2014

Study: NPR, “Why Your Doctor Won't Friend You On Facebook”, August 26, 2015

Consumers: Medical Practice Insider, “Infographic: A tweet a day keeps the doctor away”, January 18, 2013





Patients Using Social Media

- ▶ 13 year old diagnosed with a relapse of leukemia
- ▶ Used social media to cope with challenges of this life-threatening illness
- ▶ Kept friends and family updated on a “CarePages” site during 2.5 years of treatment
 - Garnered support for her
 - Gained two friends who went thru similar relapse
- ▶ Used Facebook and Twitter to search for groups
- ▶ Created a blog to post resources for others going through cancer treatment



Source: Medical Practice Insider, “The patient's perspective on social media in healthcare”, July 15, 2014

“Digital Natives”

- ▶ People under 30
 - Blogging
 - Sharing photos and videos
- ▶ Share digital information with:
 - Friends
 - Family
 - The government
 - Corporations
 - Other institutions





HOW TO KEEP THE
CUSTOMER

Organizations Using Social Media

- ▶ Marketing: helps companies increase brand exposure and broaden customer reach
 - Goal: create content compelling enough that users will share it with their social networks
 - Easy for customers to share their experience and allows organizations to quickly respond
 - Provides quick and easy access to information and help engage customers directly in real time
 - And it is often free!
- ▶ Follow conversations about your brand = real-time market data and feedback
- ▶ Educate audiences



Organizations Using Social Media



- ▶ Post jobs and find candidates to fill open positions
- ▶ Tips to effectively manage social media sites
 - Consistent messages
 - Link sites to each other
 - Post on a regular basis
 - Monitor and follow up in a timely manner
 - Some organizations hire experts

Providers Using Social Media

- ▶ 2012 study of doctors:
 - 24% use social media at least once a day to look for medical information
 - Almost 2/3 think social media enhances their ability to care for their patients



Source: Medical Practice Insider, “Infographic: A tweet a day keeps the doctor away”, January 18, 2013

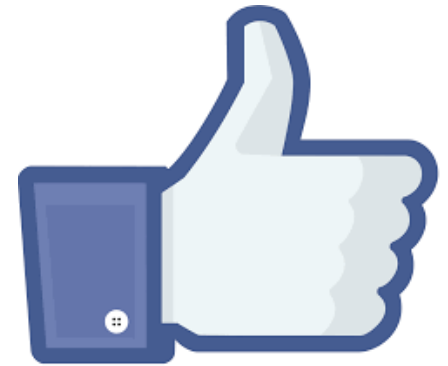
HRSA Using Social Media

- ▶ As of 2015:
 - 19,000 Facebook followers
 - 13,000 Twitter followers
 - 1 million YouTube views
- ▶ Post announcements
- ▶ Promotes HHS activities



Source: HRSA, "Social Media and E-Learning: How Technology is Connecting the HIV Community: February 2015

Positives of Using Social Media



- ▶ Helps protect reputation
- ▶ Helps organizations control things being said by and about them
- ▶ Breaks the barriers of distance and time
- ▶ Reminder: must apply HIPAA rules in order to have a positive experience

Facebook Demographics

- ▶ Primary used social media site
- ▶ 72% of Internet users have a Facebook account



Facebook Demographics

Among internet users, the % who use Facebook

	Internet users
Total	72%
Men	66
Women	77
White, Non-Hispanic	70
Black, Non-Hispanic (n=85)	67
Hispanic	75
18-29	82
30-49	79
50-64	64
65+	48
High school grad or less	71
Some college	72
College+	72
Less than \$30,000/yr	73
\$30,000-\$49,999	72
\$50,000-\$74,999	66
\$75,000+	78
Urban	74
Suburban	72
Rural	67

Source: Pew Research Center, March 17-April 12, 2015.

PEW RESEARCH CENTER



Twitter Demographics

Among internet users, the % who use Twitter

	Internet users
Total	23%
Men	25
Women	21
White, Non-Hispanic	20
Black, Non-Hispanic (n=85)	28
Hispanic	28
18-29	32
30-49	29
50-64	13
65+	6
High school grad or less	19
Some college	23
College+	27
Less than \$30,000/yr	21
\$30,000-\$49,999	19
\$50,000-\$74,999	25
\$75,000+	26
Urban	30
Suburban	21
Rural	15

Source: Pew Research Center, March 17-April 12, 2015.

PEW RESEARCH CENTER

Twitter



- While Facebook is primary, Twitter gives opportunities to branch out to new patients
- New demographics
 - Urban areas
 - Younger adults
- Tips for Twitter tweets:
 - Don't sound overly promotional
 - Tweet shared and original content
 - Create a professional profile
 - Be active on the site and interact



Social Media Use Leads to a Breach



LIBRARY OF CONGRESS

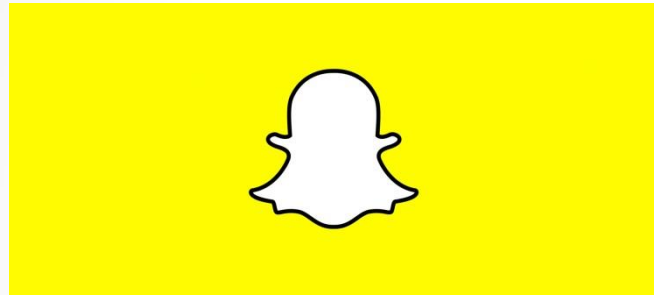


- ▶ Tweets are digitally archived by the Library of Congress
- ▶ Study of 271 medical blogs
 - 42% had patient descriptions
 - 17% had sufficient information to identify patients
 - 3 blogs even posted recognizable photos of patients (presumably without noting informed consent)



Source: Medical Practice Insider, “Healthcare social media: Keeping it professional”, June 19, 2014

Snapchat



- ▶ Photo messaging app that disappears in ten seconds or less
 - Appeals to the younger generation
 - Send photos
 - Videos
 - Add captions
 - Draw on photos/videos
- ▶ A 2012 review revealed 35 cases where photos or videos were shared on social media by nursing home & assisted living workers (16 were on Snapchat)

Student Nurse Facebook Privacy



- ▶ A student nurse moved by her three-year-old chemotherapy patient's bravery took a photo of him and posted it on her Facebook page
- ▶ She had privacy settings in place, but another nurse found the post (this nurse was not Facebook friends with the student nurse)
 - Nurse informed the hospital
- ▶ Student nurse expelled from the nursing program
- ▶ Nursing program removed from the hospital's list of accepted schools from which to draw student nurses



Source: Law 360 : “A Checklist for Avoiding HIPAA Violations on Social Media”, 1/7/16

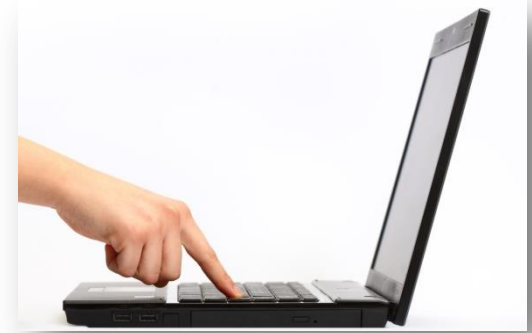
Board of Nursing HIPAA Violation



- ▶ In 2011, the Board of Nursing delivered a warning to a nurse who commented on a small town newspaper blog
- ▶ The nurse discussed a patient in positive terms using a nickname
 - Did not mention the patient's real name or medical issue
 - Mentioned patient age and mobility aids which made it clear which member of this small town the nurse was treating



Physician HIPAA Violation



- ▶ A physician posted information about a trauma patient on her personal Facebook page
- ▶ Did not use patient name and did not have any intention of revealing any confidential patient information
- ▶ Because of the nature of the injury, an unauthorized third party was able to identify the patient
- ▶ Consequences
 - Lost medical privileges
 - Reprimanded by the Rhode Island Board of Medical Licensure

Source: The Hospitalist : “How to Avoid data Breaches, HIPAA Violations When Posting Patient’s Protected Health Information Online”, 6/1/14

Testimonials Posted to Website: Leads to HHS Investigation



- ▶ **Compete P.T., Pool & Land Physical Therapy, Inc.**
 - Posted patient testimonials on website
 - Included photographs and full patient names
 - Had not obtained signed authorizations
- ▶ **\$25,000 settlement and a corrective action plan**

Source: <http://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/agreements/index.html>



Financial Service Employee HIPAA Violation

- ▶ Financial services employee posted a screenshot of a patient's medical records on personal Facebook account
- ▶ Also emailed to individuals
- ▶ Labeled "Team No Hoes"
- ▶ Hospital investigated and terminated employment
- ▶ Hospital sued
 - Judge found no grounds to support the claim against the hospital

Social Media: Preventing a Breach



- ▶ Avoid even posting online about a general event, such as a birth, a rough day
- ▶ Never use specifics that could characterize certain individuals / patients

Social Media: Preventing a Breach

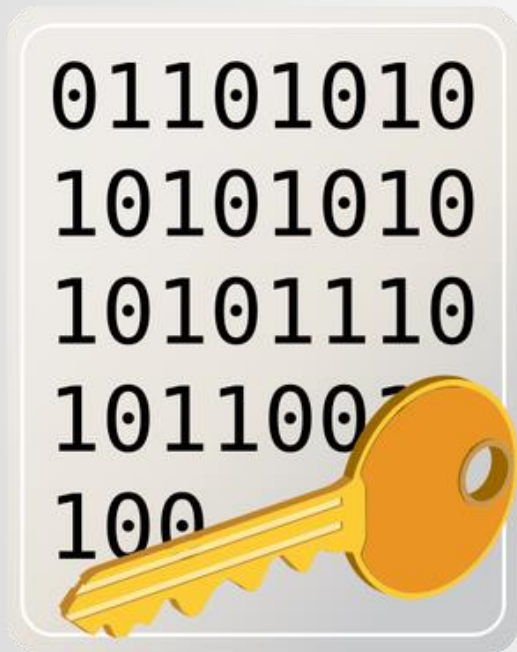
- ▶ Do not post:

- Pictures
- Images
- Scans



- ▶ Obtain signed authorizations that specifically allow a particular post

Social Media: Preventing a Breach



- ▶ Most sites are not encrypted
 - Increases odds of being hacked or shared with third parties
- ▶ May need a signed business associate agreement

Viruses and Copyright Issues



- ▶ Clicking on the wrong link may lead to a virus
- ▶ Copyright issues may arise if information is downloaded from or to social media sites



Who Should You “Friend”?

- ▶ 2013 Paper: American College of Physicians (ACP) and the Federation of State Medical Boards (FSMB)
 - Encourage:
 - Maintaining professionalism when using social media
 - Providing patients with quality resources
 - Discourage physicians from:
 - Extending or accepting friend requests with patients
 - Interacting with current or past patients on personal social networking sites

Source: Annals of Internal Medicine, “Online Medical Professionalism: Patient and Public Relationships: Policy Statement From the American College of Physicians and the Federation of State Medical Boards”, April 16, 2013

Develop a Social Media Strategy



- ▶ Check out your current online presence
- ▶ Define expectations and purpose for the social media
- ▶ Create roles and responsibilities
- ▶ Conduct a risk analysis
- ▶ Train employees on social media policies and practices



Preventing “HIPAA – Social Media Heartburn”

- ▶ Have someone in your organization become a Social Media expert
 - Develop a social media strategy
 - Review content before it is posted
 - Monitor content

Sources: MalvernGroup, “HIPAA Checkup – Social Media”, June 4, 2014
NCBI, “Social Media Guidelines and Best Practices: Recommendations
from the Council of Residency Directors Social Media Task Force”, 2/2014



Preventing “HIPAA – Social Media Heartburn”



- ▶ Review social media platforms during your security risk analysis
- ▶ If you use social media to communicate with patients:
 - Ensure it is secure (at rest & in transit) and have an agreement in place with the patient/guardian
 - Determine what will be included in designated record sets
 - Have a business associate agreement in place with the vendor
- ▶ Consider monitoring social media sites for a potential breach of confidentiality
- ▶ If you do not have an incident response plan, develop one

Sources: MalvernGroup, “HIPAA Checkup – Social Media”, June 4, 2014
NCBI, “Social Media Guidelines and Best Practices: Recommendations from the Council of Residency Directors Social Media Task Force”, 2/2014



Policies Help Prevent “HIPAA – Social Media Heartburn”



- ▶ Have social media policies; include in them:
 - Acceptable strategies to use social media
 - Who may use them and how may be used (e.g. for marketing/sales purposes)
 - Explain PHI may not be communicated through social media – may not even remotely identify an individual(s)
 - Downloading and uploading of information
 - Reporting of incidents
 - Sanctions for not following policies



Policies Help Prevent “HIPAA – Social Media Heartburn”

- ▶ Also include in social media policies:
 - Do not use personal devices to record images or videos of residents
 - Photos and images cannot be distributed
 - Clearly define where personal cell phone use and other devices are allowed to be used
 - Inform the residents/patients/clients and their visitors about privacy considerations





Policies Help Prevent “HIPAA – Social Media Heartburn”

- ▶ Include in social media policies:
 - Definition of Protected Health Information (PHI)
 - Individually identifiable health information that is created by or received by the organization, including demographic information, that identifies an individual, or provides a reasonable basis to believe the information can be used to identify an individual, and relates to:
 - Past, present or future physical or mental health or condition of an individual.
 - The provision of health care to an individual.
 - The past, present, or future payment for the provision of health care to an individual.

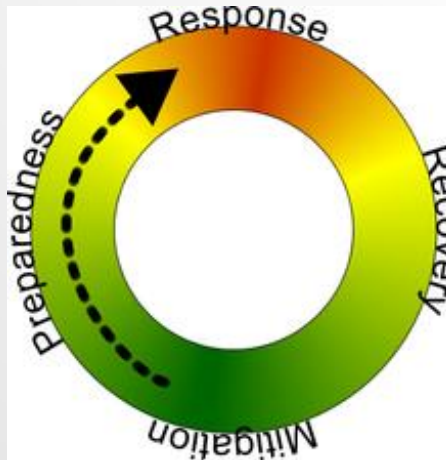
PHI – Identifiers

1. Names
2. Medical Record Numbers
3. Social Security Numbers
4. Account Numbers
5. License/Certificate numbers
6. Vehicle Identifiers/Serial numbers/License plate numbers
7. Internet protocol addresses
8. Device identifiers and serial numbers
9. Health plan numbers
10. Full face photographic images and any comparable images
11. Geographic subdivision, smaller than a State
12. Web universal resource locaters (URLs)
13. Any dates related to any individual (date of birth)
14. Telephone numbers
15. Fax numbers
16. Email addresses
17. Biometric identifiers including finger and voice prints
18. Any other unique identifying number, characteristic or code



Policies Help Prevent “HIPAA – Social Media Heartburn”

- ▶ Have a privacy and security incident response policy, procedure, and plan in place



Training Helps Prevent “HIPAA – Social Media Heartburn”



- ▶ Train your workforce...
all of them...often



Helpful
Tips

Training Helps Prevent “HIPAA – Social Media Heartburn”

▶ Training tips:

- Posting a comment on a patient’s page is seen by all of your friends and their friends and may lead to a breach
- May not transmit any image or video of a patient
- May not take photos of patient on their phones or any unauthorized phones, cameras, etc.
- Report any known or suspected breach by any workforce member
- Do not text patient



Source: Law 360, A Checklist For Avoiding HIPAA
Violations On Social Media, January 7th, 2016



Checklist for Avoiding HIPAA Violations

- ▶ Keep personal social media accounts separate from organization accounts
- ▶ Avoid “friending” patients, subscribers, and clients
- ▶ Remember things are never fully deleted on the Internet
- ▶ Private personal page posts can still be accessed and distributed
- ▶ Never repost, retweet or “regram” patient information on personal pages
- ▶ Understand the list of 18 personal identifiers – very little information can lead to a breach





Other Helpful Tips

- ▶ Post signs in facilities describing photos and videos may not be taken
- ▶ Post a commenting policy on your social media sites
- ▶ Collaborate with human resources, legal counsel, risk management, privacy officer, security officer, compliance officer, marketing, and sales

Holly Schlenvogt
Privacy & Security Consultant / Owner
HRT Consulting, LLC
(262) 468-4291

hschlenv@hrt.consulting.com | <http://hrt-consulting.com>

Thank you!



Thank You!

Thank you for viewing this webinar. If you have any comments or feedback, please feel free to email us at admin2@hipaacow.org.

Visit our website at hipaacow.org!!



“Like Us” on



“Follow Us” on

