

# Is Your Practice Website Legally Compliant?

## FEATURED ATTORNEY



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Executive Partner

More and more professional practices are using the Internet to market their services and to increase their patient base. Often, the practice's website is the first opportunity which a professional has to promote the quality and value of his practice. It is critical that all statements made on one's website be factually accurate in order not to run afoul of State and Federal consumer protection laws relating to fraud. In addition, because physicians and other healthcare professionals are held to a variety of regulatory standards governing advertising, professional conduct, and patient privacy, it is critical that their websites be in compliance with such standards in order to avoid legal liabilities that could potentially affect their professional license.

### – If you're using **TESTIMONIALS**

Improper use of patient testimonials on a healthcare-related website can subject your practice to allegations of "professional misconduct" under New York's Education Law. In order to legally use testimonials, you must comply with certain pre-conditions governing their use. Appropriate legal disclaimers should also be posted on your website if you are going to use testimonials to promote your practice.

### If you're posting **BEFORE-AND-AFTER PHOTOS**

The authority of the Federal Government to issue fines under the HIPAA privacy law has been broadened by recent legislation. Discretionary fines now range from a mere \$100 per violation to up to \$50,000 per occurrence. If you are going to use patient photograph as a marketing tool, it is critical that you obtain a HIPAA-compliant Marketing Authorization from your patients. Standard HIPAA authorization forms are *not* sufficient unless they also meet the additional requirements under HIPAA that are specific to marketing releases.

### – If you're using **PHOTOS OF YOUR PROFESSIONAL STAFF**

An appropriate Release Form should be signed by all individuals being photographed for 2 reasons: (1) to grant ownership of the photographs to the practice for perpetual marketing purposes; and (2) to grant the practice the authority to use the person's likeness. Failure to do so may violate the individual's privacy rights and could subject your practice to fines or judicially-mandated orders forcing you to discontinue use of such photos if a staff member complains or is no longer associated with the practice.

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Please note further that federal HIPAA law mandates that you must post a notice of your privacy practices on your website.

In short, internet websites are a valuable marketing tool for most professional practices. However, they also raise potential legal problems if you are not careful.

If you require assistance with any of the foregoing, including the development of *Terms of Use* for your website, or would like us to review your website developer agreement to establish the practice's ownership rights in the finished product, please feel free to contact [Patrick Formato, Esq.](#), in our Lake Success, NY Office (516-328-2300).