

# Defamatory reviews How to protect your reputation

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**M**aintaining a positive online presence is vital to the success of any medical practice.

A recent survey from Doctor.com revealed that as many as 63 percent of respondents would choose one provider over another because of a strong online presence. Similarly, 60 percent of respondents have chosen one provider over another based on a positive online reputation.

As patients increasingly rely on the internet to determine which provider is best for them, online reviews play a critical role in the success—or failure—of modern medical practices. Unfortunately, it is often impossible for a potential patient to differentiate truthful and accurate reviews from fraudulent ones. Worse, a single disgruntled patient may leave many reviews across a number of platforms, inflicting untold harm with a few keystrokes.

The risks posed by online reviews are especially dangerous for healthcare practices since health complications can arise or worsen even if providers have done everything properly, and reviewers may be completely misinformed regarding the standard of practice applicable to their situation.

Physicians have a right to defend their reputations and livelihoods against reviewers who spread false and damaging claims. Fortunately, there are a variety of legal options available to combat defamatory online reviews.

### KNOW YOUR RIGHTS

Defamation laws vary from state to state but, generally, a person may be liable for defamation when he or she posts a review that contains demonstrably false assertions of fact (as opposed to opinion), that are damaging to the subject of the review.

Patients are entitled to post reviews that are statements of opinion, such as “I didn’t care for the doctor’s bedside manner” or “The office was poorly decorated.” While a provider may disagree with a patient’s opinion, those disagreements are not proper bases for legal action because opinion is generally protected by the First Amendment.

Patients can also provide reviews that contain statements of fact, so long as those assertions are accurate. Like statements of opinion, truthful statements of fact are protected free speech under the First Amendment.

However, if a review contains a *false* assertion of fact, the reviewer may be liable for defamation. This may include statements such as “I was billed for procedures that were not performed” or “The doctor botched the procedure.”

### SEEK LEGAL ADVICE

Unlike many other industries, healthcare providers operate in a highly-regulated environment. Providers should be extremely careful when confronting defamatory reviews, as they must not violate any of the ethical, legal, or regulatory guidelines, e.g., HIPAA, that govern doctor-patient relationships.

In addition to regulatory concerns, health-

### HIGHLIGHTS

▶▶ Consider the severity of the harm inflicted when determining whether to pursue legal action.

▶▶ Make a sustained effort to increase the number of positive reviews. Asking satisfied patients to post truthful online reviews can increase a physician’s overall rating.

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care practices should keep the following steps in mind when considering whether or how to address negative online reviews:

**Seek a lawyer.** Consult a lawyer with experience handling defamation matters for healthcare providers. These matters are fraught with potential peril if not handled properly, so you need to work with a qualified and effective advocate. After all, your business and reputation are on the line not only because of the defamatory review but in how you respond to it.

**Determine if the review qualifies as purported fact.** Work with your lawyer to determine whether the statements in the negative online review qualify as statements of purported fact. To do this, you may need to parse the language carefully to determine exactly what the reviewer was communicating. Often times, statements may initially appear to be factual but after a deeper look may constitute opinion, or vice versa.

**Address the review.** If the review contains only statements of opinion, consider alternative methods for addressing it, such as pursuing any takedown procedures or other features the review platform provides to help business owners.

**Increase positive reviews.** Make a sustained effort to increase the number of positive reviews. Asking satisfied patients to post truthful online reviews can increase a provider’s overall rating and may dilute the effect of one older negative comment compared to more recent positive reviews.

**Determine if a legal claim is viable.**

If you believe that the review is indeed defamatory, ask your lawyer about whether you have a viable legal claim. When determining whether to pursue legal action, keep in mind that:

- If a review is posted anonymously, you may be able to obtain a court order compelling the internet service provider to disclose the identity of the wrongdoer so that he or she may be taken to court.
- To prevail in court, you will need to *prove* that the statements in question are false. There are many different ways of establishing the falsity of the reviewer’s claims, including through the testimony of witnesses (such as office personnel), records, or other evidence.

**Ask yourself if legal action is worthwhile.**

Consider the severity of the harm inflicted when determining whether to pursue legal action. A widespread defamatory review can lead to the loss of patients as well as reputational harm. Pursuit of a legitimate defamation claim can result in both removal of the offending review and an award of damages to the provider to compensate for the harm suffered. On the other hand, in cases of very minor misstatements, legal action may not be worth it.

### TAKE ACTION

Some healthcare practices have begun fighting back against defamatory online reviews. Although many cases settle outside of court, providers have been increasingly seeking court intervention where the damages are significant.

For example, in a recent case in Arizona, two doctors successfully sued a patient who used her own website and other online review sites to post negative claims about her surgeries and other procedures. The jury awarded the doctors \$12 million before the parties reached an agreement.

In another recent case, *Great Wall Medical P.C., et al. v. Levine*, a Manhattan gynecologist filed a lawsuit for defamation, libel, and inflicting emotional distress based on allegedly false and defamatory reviews posted on ZocDoc and Yelp. The doctors allege that the defendant, acting under a pseudonym, posted an online review containing several fabrications, including statements that the doctors had “zero knowledge,” engaged in “medical fraud” and tried to “scam” the reviewer. The case is ongoing.

Although physicians operate in a highly-regulated environment, they have the right to defend their reputations and businesses when they are defamed. If this happens, physicians should consult experienced lawyers to ensure they take appropriate legal measures that comply with HIPAA and other regulations while effectively addressing damaging and defamatory reviews. ■

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