



New Frontiers in Communication: PR, Social Media & Protecting Your Reputation

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In the digital era of communication, reputations can be impacted at the speed of light by the swipe of a key...

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Overview

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Defamation: A Definition



A false or derogatory
statement of fact



About another person



To a third party

Elements of Defamation



1. Falsity



2. Statement of
Fact



3. Publication



4. Fault



5. Damages

Elements of Defamation



1. Falsity

- Litigating the truth of the underlying statement
- False Statement – substance or gist is contrary to the true facts, and reasonable people hearing, reading, or learning of the statement would be likely to think significantly less favorably about the person referred to than they would if they knew the true facts. *CJI 22:13*
- A statement is defamatory if it “tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.” *Burns v. McGraw- Hill Broadcasting Co.*, 659 P.2d 1357 (Colo. 1983)

Elements of Defamation



2. Statement of Fact

- In considering whether a particular statement is actionable as libel or slander, we must first determine whether a reasonable factfinder could conclude that a statement contains or implies an assertion susceptible of being proved false. This necessarily requires us to make two separate inquiries: (1) does the statement contain or imply a verifiable fact about the plaintiff, and (2) is the statement reasonably susceptible to being understood as an actual assertion of fact. *Keohane v. Wilkerson*, 859 P.2d 291, 295-97 (Colo. App. 1993)
- Factors for Consideration in Determining whether the statement could reasonably be understood as containing an express or implied assertion of fact:
 - the phrasing of the statement,
 - the context in which it appears,
 - the medium through which it is disseminated
 - the circumstances surrounding its publication,
 - the impression created by the words,
 - the general tenor of the conversation or article from the point of view of the reasonable person; and
 - a determination of whether the statement implies the existence of undisclosed facts which support it.

Id.

Elements of Defamation



3. Publication

- Includes: internet posting, email, newspaper, public speeches, radio
- Must have been communicated and understood by the third party as intended to refer to the plaintiff. *CJI 22:9*
 - A jury must consider the statement as a whole, in light of surrounding circumstances, and what the statement meant to the person who heard it, giving the statement its plain and usual meaning, and “without regard to how the defendant intended the statement to be understood.” *CJI 22:10*



4. Fault

- Private Individual – Must show negligent disregard of the truth
- Public Official/Figure – Must show actual malice (knew statement was false or acted with reckless disregard of the truth)

Elements of Defamation



5. Damages

- Generally, must show material harm in the form of (1) economic loss; and/or (2) damage to reputation
 - Can be loss of business opportunity or employment, lost wages and lost profits
- Not required to show actual damages if defamation *per se*
- Punitive damages available if the defamatory act is intentional or malicious

Forms of Defamation:



Libel: defamation in written form



Slander: defamation in spoken form

Types of Defamation

Defamation Per Se

Inherently
defamatory – extrinsic
facts not necessary

Accusations of criminal
offense
Accusations of professional
unfitness or misconduct
Accusations of loathsome
diseases (e.g., STDs, HIV, etc.)
Accusations of serious sexual
misconduct

Damages Presumed -
not required to prove
actual damages,
unless the defamed is
a public official

Defamation Per Quod

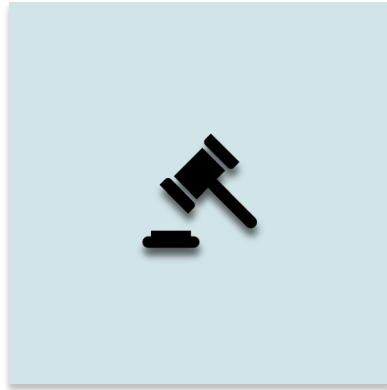
All defamation
that is not *per se* –
statements that
are not hurtful on
their face

Must prove special
damages *i.e.*,
specific monetary
losses resulting from
the defamation

Defamation: Defenses



Truthful Statement



Privilege



Consent to Publication of
the Statement

Remember Opinion Statements Do Not Constitute Defamation

"He is the worst provider I have ever been treated by."

"I do not recommend her."

"This doctor needs a better bedside manner."

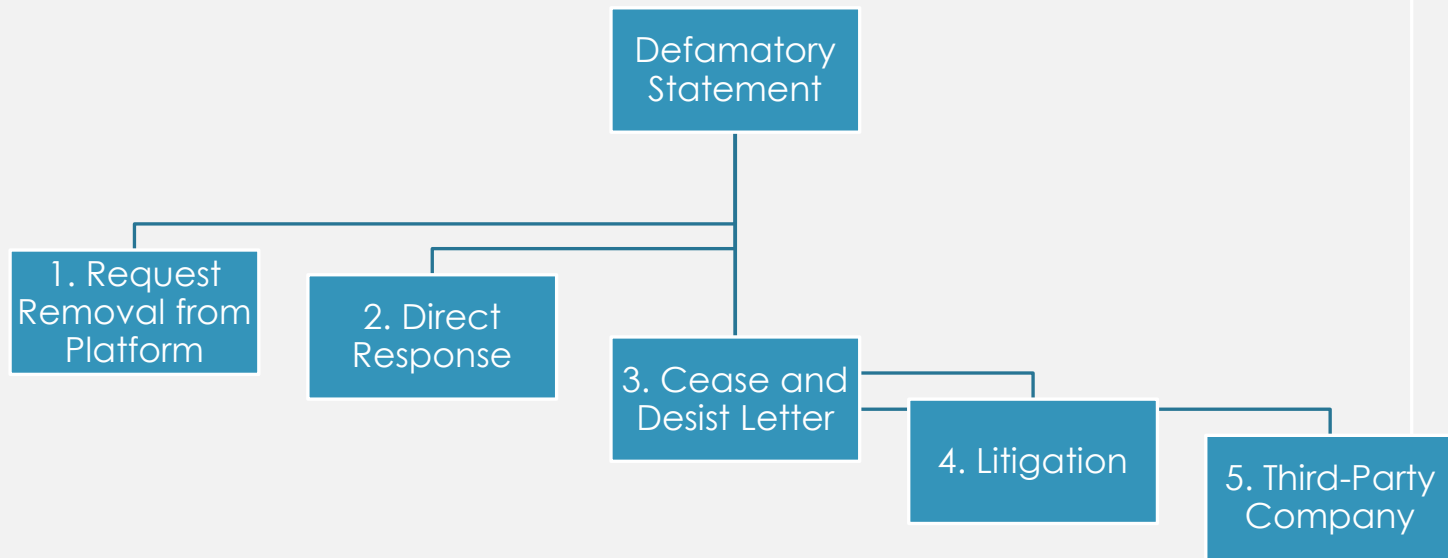
Opinion
Statement

Fact
Statement

"Following his care my loved one died."

"She said "X" during our visit."

"I had to wait 2 hours to be seen by Dr. X."



Options for Resolution

Request Removal

Pros

Not resource intensive

No chance of causing further harm

Cons

Delays from platforms or denial of request

Cannot correct damage already done



Removal Options



"If you're concerned the content of a given patient-submitted survey violates our Editorial Policy, you can ask Healthgrades to review it for potential removal."

Will remove reviews that violate community review guidelines – content that is libelous, defamatory, harassing threatening, or inflammatory, obscene or lewd, misleading, deceptive or fraudulent, contains personal contact information, contains personal website links, impersonating other persons or organizations, personal attacks and name-calling, references legal matters or proceedings



1. Can turn Recommendations off for your Business page if you are the administrator
2. Can report Recommendations that don't follow Facebook's Community Standards, including:

Violence and criminal behavior – coordinating harm and promoting crime; dangerous organizations and individuals; fraud, scams, and deceptive practices, restricted goods and services, violence and incitement

Safety –bullying and harassment, human exploitation

Objectionable Content – hate speech, privacy violations

Integrity and Authenticity – account integrity and authentic identity representation; cybersecurity; inauthentic behavior; memorialization; misinformation; spam

Respecting Intellectual Property



1. Report Review
2. Investigated by Yelp moderators
3. Sends and an email notification to the business owner who reported the content notifying them of the results
4. Can contact Support team with appeal of content removal denial or with a court order declaring review to be defamatory

Removal Options



Google Reviews –

1. Find your Business Profile
2. Find the review you'd like to report
3. Click Flag as inappropriate and select the type of violation you want to report
4. Can take several days for review to be assessed/removed
5. Can file a legal removal request if evidence that the complaint constitutes defamation

Google Alerts – automatic email whenever a new page pops up with your alert text

Removal Options



Prohibited and Restricted Content –

Fake Engagement

Impersonation - includes attributing your content to another individual or deceptive content as well as false representations

Misinformation & Misrepresentation

Harassment

Hate Speech

Offensive Content – includes obscene, profane, or offensive language or gestures

Personal Information

Obscenity & Profanity

Sexually Explicit & Adult-Themed Content

Violence & Gore

Dangerous Content – includes threats of harm, harassment, intimidation, bullying, incitement of hatred, discrimination or disparagement of protected groups

Illegal Content

Child Safety

Terrorist Content

Off-Topic – includes general political, social commentary, or personal rants

Unclear and Repetitive Content

Defacement & Mischief

Communications Decency Act

- 47 U.S.C. § 230(c)(1)
 - “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information by another information content provider”
- What Does It Mean?
 - Internet Service Providers and other online intermediaries including internet hosting sites are not treated as the publisher of third-party content and are thereby protected from legal liability for defamatory content posted by third-party users

Direct Response

Pros

Cons

Quick and not resource intensive

Can demonstrate responsiveness to concerns

Make position and/or corrective actions publicly known

Defamatory statement remains publicly available

Potential to invite further defamatory comments

Potential to make statement that could be used against you later and HIPAA concerns

Potential to appear defensive – do more damage



The Response

- Who should respond?
 - Legal counsel
 - Public relations professional
 - Designated company representative
- Response Guidelines
 - Limit internal access to official social media accounts
 - Develop posting/response guidelines and policies
 - If responding internally, develop secondary review process
 - Develop template responses
 - Develop policies regarding investigation of the contents of the review/posting

HIPAA & Privacy Considerations

DO:

- Reference office policies and standard protocols
- Keep your response brief and your tone polite
- Look for ways to engage offline with the individual

DON'T:

- Reveal the individual's patient status
- Mention anything specific about the patient
- Post pictures or videos of the patient
- Become argumentative or combative

**** Just because a patient reveals personal information about him/herself does not authorize a provider to reveal the patient's personal health information**

Additional Laws to Consider

- ▶ C.R.S. §18-9-111 (2024) The following constitutes harassment, a class 2 misdemeanor:
 - ▶ Initiating communication with a person, directly or indirectly, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network, computer system, or other interactive electronic medium in a manner intended to harass or threaten bodily injury or property damage or is obscene
 - ▶ Making telephone calls or causing a telephone to ring repeatedly with no purpose of legitimate conversation
 - ▶ Making repeated communications at inconvenient hours that invade the privacy of another and interfere with the use and enjoyment of their private residence
- ▶ Invasion of Privacy by Public Disclosure of Private Facts (Common Law Tort)
 - ▶ A plaintiff may recover if the defendant (1) made a fact about the plaintiff public; (2) before this disclosure the fact was private; (3) a reasonable person would find the disclosure of fact very offensive; (4) at the time of the disclosure, the defendant knew or should have known that the fact disclosed was private; and (5) the public disclosure caused plaintiff injuries and losses. *CJI 28:5*.

Cease & Desist

Pros

Greater likelihood that individual will remove and cease defamatory behavior

Involvement of legal counsel can signal seriousness of behavior

Cons

Aggressive and could incite individual to engage in further defamatory statements

May not be taken seriously if viewed as an empty threat

Litigation

Pros

Enforceable means to prevent further defamation

Deterrence of future defamation

Clear name and reputation and obtain damages

Cons

Difficulty in proving falsity of statement, damages, etc.

Aggressive, Resource Intensive - time, cost

Unpredictability of outcomes

Colorado Anti-SLAPP Law

- SLAPP = Strategic Lawsuits Against Public Participation
- Establishes an expedited process for dismissing civil actions filed against people for exercising their First Amendment rights about matters of public interest
- Designed to protect Coloradoans from meritless lawsuits that target free expression under First Amendment

Colorado Anti-SLAPP Law

- ▶ Colorado Supreme Court recently announced it would consider defamation case brought by Tender Care Veterinary Center against an individual who posted a negative online review.

Tender care... ha! There is nothing about them that resonates with tender OR care.

More like belligerence and avoidance.

Do yourself a favor, drive the extra 20 minutes for the best care possible and AVOID a travesty in your home and a hole in your pocket.

As the PRETEND "head vet" clearly stated in her verbal assault on me (which we recorded), they DO NOT give money back.

Tender care or NO cares given? You all decide.



Like



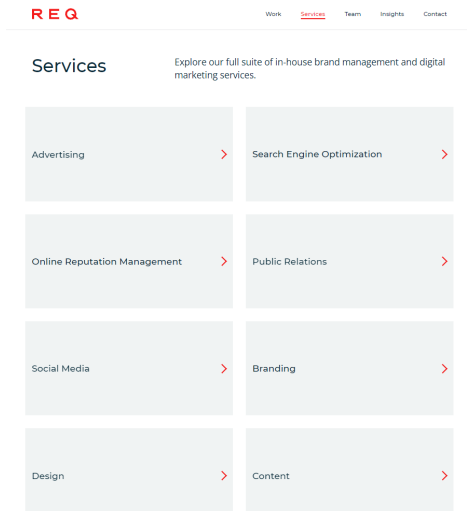
Comment



Share

Third-Party Content Manager

- Search Engine Optimization (SEO)
 - Suppress malicious reviews and search results
 - Promote positive search results
 - Monitoring of online reviews, blogs, comments, etc.
 - Content removal, in some instances



When Your Reputation Is Under Attack, Everything You Value Is At Risk.

In today's world, anyone can do a quick credibility check on you or your business online. And they will.

It's upsetting when your years of hard work are discredited because negative coverage appears online. It's also frustrating if you've made a mistake in the past that you wish to rectify, but can't.

Our specialists use our advanced SearchKnight™ technology to rapidly repair your damaged reputation, inoculate your vulnerability, and grow your brand's reputation even better than before.

Protect Your Reputation Now

Get A **Free** Reputation Management Analysis

Full name
Email
Phone
Description of Services

[Get your analysis](#)

[Privacy Policy](#)



Social Media Management



- ▶ Employee Policy
 - ▶ Prohibition on postings that include patients to social media
 - ▶ Policy on employment related postings
- ▶ Business Considerations
 - ▶ Obtain patient authorization prior to the use or disclosure, including
 - ▶ Ensure that the patient understands what they are consenting to
 - ▶ Minimize interactions with patients online
 - ▶ Inadvertent disclosure of PHI
 - ▶ Date
 - ▶ Unusual circumstances
 - ▶ Identifying images
 - ▶ Age
 - ▶ Geography
 - ▶ Anatomic site/patient history
 - ▶ If responding internally, develop secondary review process
 - ▶ Develop template responses
 - ▶ Develop investigation structures

Smart Devices:

Texting



- ▶ When is text messaging an appropriate form of communication?
- ▶ When is text messaging not an appropriate form of communication?
 - Sharing and storing patient information on smartphones
 - Purpose of disclosure
 - Clinical consultation
 - Education/Research
 - Social media/marketing
 - Photos taken intraoperatively or in clinical setting
 - De-identified v. PHI?
 - Any facial photography
 - Identifiers intrinsic to the patient (e.g., birthmarks, scars, anatomic anomalies)
 - Identifiers on the patient (e.g., unique clothing, jewelry, piercings, tattoos)
 - Identifiers around the patient (e.g., unique settings, surroundings, or locations)
 - Obtain authorization to disclose

- Overall communication strategy
 - Internal communications are not always internal
 - Have a strategy of who to contact if no in-house media/public relations team
 - Be aware of the many avenues which information can spread

Responding to a Public Event

Telehealth Communication Considerations



- Telehealth – the practice of medicine using electronic communication, information technology, or other means of interaction between a healthcare provider in one location and a patient in another location with or without an intervening healthcare provider
- Risks Specific to Telehealth
 - Technology failure
 - Inability to see or interpret visual or physical cues
 - Lack of physical access in event of emergency
 - Unsecured communications
 - Confidentiality concerns



Telehealth Practical Considerations



- Does not alter other rules or standards of practice
 - Written policies and procedures should be maintained at the same standard as traditional in-person encounters for documentation, maintenance, and transmission of the records of the encounter using telehealth technologies.
 - All privacy, security, and confidentiality laws still apply to this format of healthcare
 - Colorado Medical Board Policy 40-27
- Must still establish provider-patient relationship
- Must have proper consent forms
- Must have an emergency plan that is provided to the patient that addresses what action will be taken if referral to an emergency department for treatment is necessary for the patient's safety
- Non-clinical telehealth technology considerations should never limit or influence professional discretion regarding diagnoses, scope of care, or treatment
- Maintain written electronic communications in medical record and document oral electronic communications in medical record as with any other visit
- Beware of communications across state-lines
 - Location of care is determined by the originating site *i.e.*, the patient's location
 - Does not abrogate state licensing requirements

- Understand the danger of not having policies
- Understand the danger of having policies that are not enforced
 - Case Example –

Doc Wins \$4.75M in Fraud, Defamation Case Against Hospital

Understanding Risk

- Develop smart enforceable policies
 - When a policy is adopted, it should be enforced.
 - If it is not going to be enforced, consider whether it should be a policy.
 - For Example: Policies regarding use of personal devices in patient care spaces/OR?

Risk Mitigation Strategies

- 
- AI Generated Content
 - Defamatory statements
 - Use of likeness without consent
 - Use caution

What
about AI?



Questions?

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