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Ethically speaking: social media and OTs

Some considerations for guidelines to protect
you, your practice and your patients

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Overview of Presentation

- What is Social (Networking) Media?
- Benefits and risks to occupational therapists of using SNM
 - Marketing
 - Personal use
 - Patients?
- Principles from Legislation & Policies
- Thus... do's and don'ts





What is Social (networking) media

- Also called Web 2.0
- Definitions are constantly evolving
- Online, digital technology
- (Internet-based applications)
- Allow creation and exchange of information
- User-generated content



SM=SNM?



- No, not synonymous
- SM = strategy/system that delivers content to others
 - Group of internet-based applications
 - Allow for creation and exchange of user-generated content, e.g. YouTube
 - Includes different media, e.g. videos, blocks and social network sites

Roos



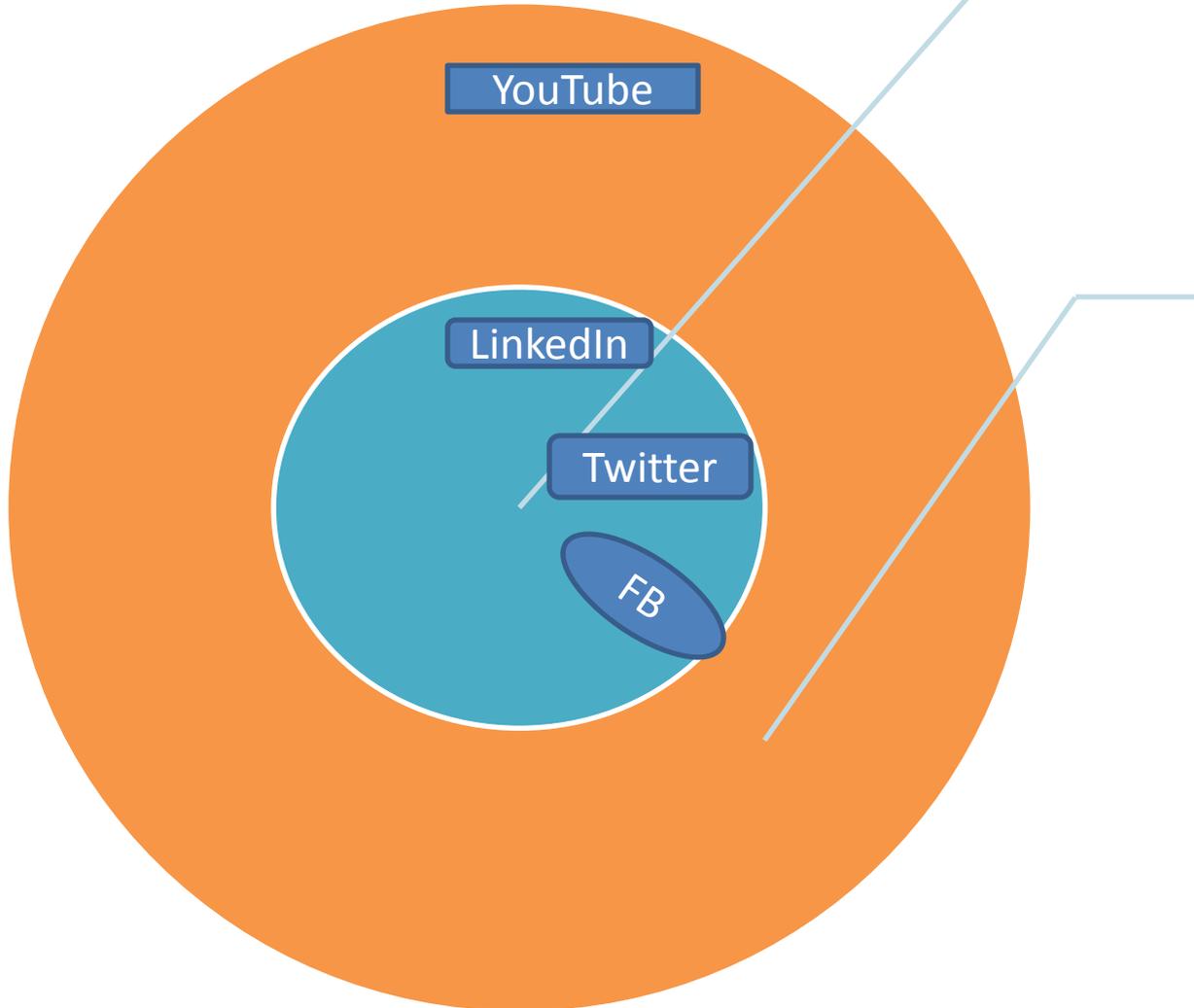


- SNM=part of the broader concept
 - Tools for connecting people with similar interests
 - E.g. LinkedIn
- Some sites, e.g. FB do both – share user-generated content and connect people with each other



Social
Networking
Media

Social
Media



YouTube

LinkedIn

Twitter

FB



Interesting dismissals

- 2015: 6 HSBC bankers fired in Birmingham for posting distasteful picture mocking ISIS beheadings
- Racist posts 2015:
 - Paula Deen (celebrity chef) lost deals, contracts, endorsements from FoodNetwork, Walmart, and her then-publisher Ballantine Books
 - Chicago bartender fired after calling black people unemployable (in less savoury language)
- Taco Bell employee fired after posting pic of him urinating on TB signature dish
- CareerBuilder reports
 - 28% of employers dismissed employees due to using internet for non-work activity (online shopping, checking FB, etc.)
 - 18% employers dismissed employees due to content of SM posts



HCPs and SNM

- International examples abound of misbehaviour around SNM
 - 2013: Hospital sued because Dr posts pics of drunk patient on FB and Instagram (The Law Med Blog) (Northwestern hospital)
 - 2014: Patient diagnosed with STI sues hospital after staff posted her medical history on FB (Cincinnati's WLWT5)
 - 2014: Emergency Department Dr fired after commenting on a FB post using the patient's initials - Dr sued health system for unfair dismissal! (AHC Media),

- USA State medical Boards:
 - $\pm 30\%$ of state medical boards report having fielded complaints of “online violations of patient confidentiality,” - *JAMA* survey.
 - More than 10% had handled an episode like the one at Northwestern Memorial, involving what the *JAMA* survey refers to as “online depiction of intoxication.”
- QuantiaMD study reports
 - 13% of physicians admit to having used public online platforms to hash out specific cases with fellow practitioners.
 - Names are withheld, but providers may inadvertently supply other details that allow patients to be identified





How do Patients' and Practitioners use SM?

- Netherlands study looked at patients' and practitioners'
 - Motives and use of SM for health-related reasons
 - Barriers and expectations for health-related SM use
- HCPs and patients have very different reasons for using it and different expectations
- Mostly used to contact others within their own group, i.e. pt-pt, dr-dr



Reasons for use



Patients

- Increasing knowledge
- Exchange advice between patients
- Social

HCPs

- Communication with colleagues
- Marketing
- Increasing knowledge (YouTube)
- Patient-Dr communication





Barriers

Patients

- Privacy concern
- Unreliability of the information
- No need for SM
- Inefficiency

HCPs

- Inefficiency
- Lack of skills (i.e. how to use SM properly)
- Legal grounds
- Privacy concern
- No need for





What are the concerns?

- Raises a number of professionalism issues:
- Privacy & confidentiality
- Professional boundaries
- Recruitment
- Integrity, accountability and trustworthiness of health care professionals
- Line between professional and personal identity





Professional and personal identity – so what?

- › Social media is increasingly becoming part of the mainstream media
 - Need to be aware that users are communicating with a potentially unknown audience.
 - You are not anonymous





- › "Banter, jokes and offensive comments are commonplace and often instantaneous. Communications intended for a few may reach millions." Keir Starmer, the UK director of public prosecutions
 - Adjust their privacy settings to limit the publication of information in the public domain
- › Unethical (unthoughtful) practices eventually affect your reputation, no matter how much you repent later





Some professions are restricted

- › Florida Judge: ordered to disqualify himself from a trial - Facebook friend of the assigned prosecutor (*Domville v. Florida*, Fla. Dist. Ct. App., No. 4D12-556, 9/5/12).
 - Judges frequently are called upon to accept "freely and willingly" restrictions that "might be viewed as burdensome by the ordinary citizen."
 - "Judges must be vigilant in monitoring their public conduct so as to avoid situations that will compromise the appearance of impartiality,"



› South African Judges:

- “Considerable body of opinion among judges both in South Africa and abroad that Facebook necessitates too public a disclosure of private facts than is appropriate in the case of judges. Unless a matter of high moral principle is involved I think it better that when it comes to issues that may affect the reputation of judges collectively, it is better that the judges should try to operate ‘in phase’ with one another, rather than venture upon frolics of their own.” (Judge Willis, Heroldt v Wills)





South Africa

- 13 million South Africans use FB
 - 10 M use via mobile devices
 - 1.6M use basic feature phones to access
 - 1.4M access via tablets
 - 49.2% Female; 50.2% Male

WorldWideWorx South African Social Media Landscape 2016

- Racist posts, hate speech abound
- 2 reported defamation cases
- Numerous CCMA and labour court dismissal cases
- Little SA research in peer-reviewed literature



South Africa

- Post-Penny Sparrow & Dianne Kohler-Barnard:
Increasing calls in SA for regulation and education around SM use





- "Learning how to use social media as a tool can only help our students in their future endeavors ... Once you put something on the internet, that's it. That post will always exist, even if you delete it. One misuse of this medium as a teen could plague your adult life forever."





Benefits and risks to health care practitioners?





Uses of SM for OTs/HCPs (Ventola 2014)

- Professional networking
 - Online community
 - Listen to experts
 - Network and communicate with colleagues re patient issues
 - Clinical topics, ethics, politics, biostatistics, practice management, career strategies and even dating in medical environment (!), support for subspecialising
 - Crowdsourcing – of knowledge, not necessarily money (OT FB pages good example)
 - Streaming procedures online and allowing real-time questions via Twitter (to help HCPs in developing countries)



- Professional Education
 - Adapting clinical curricula at University level
 - Communication, professionalism, ethics
 - Some students find using FB in teaching to intrude in their personal lives
 - Could be beneficial for remote practitioners to access CEU activities, e.g. webinars which allow real time questions





- Organisational promotion
 - More than just marketing:
 - Communicating with community of patients, enhancing visibility of the organisation; marketing products and services; establishing a venue for acquiring news about activities, promotions, fund-raising; providing channel for patient resources and education; customer service and support.





- Patient care

- Some facilities allow patients to directly ask health-related questions , ask for prescription renewals,
- Patients want to use it for reminders, scheduling appointments, diagnostic test results, answering general questions and prescription notifications
- HCPs still relatively reluctant to use it
 - Not reimbursed
 - Ethical concerns





- Patient education
 - Access to health care information and educational resources that are reliable
 - Distribute evidence-based information rather than old wives' tales
 - Some platforms allow for patient participation in discussions



- Public Health programs
 - Can create vast global networks and mobilise larger numbers of people
 - Public education and advocacy on public health issues
 - CDC uses FB and twitter to track keyword content to identify outbreaks early, has used to track Legionnaire's disease
 - Red Cross track posts during disasters to identify areas of greatest need
 - Can influence public behaviour through social reinforcement – e.g. organ donor status – in US 23-fold increase when FB allowed users to post their OD status





Risks/Dangers (Ventola 2014)

- Poor quality of information
 - Lack of quality and reliability, because authors are unknown/provide limited identifying information
 - Evidence-based practice de-emphasises anecdotal reports, but SM emphasises them because they rely on individual stories for collective medical knowledge
 - Conflicts of interest may be hidden, but even when overt patients are still at risk of biased info



- Damage to professional image
 - Posting unprofessional content that can reflect unfavourable on HCP, students, employers
 - SM conveys info about your personality, values and priorities and first impressions created by this can be lasting.
 - Behaviours that can be interpreted as unprofessional
 - Use of profanity or discriminatory language; violations of patient privacy; images of sexual suggestiveness or intoxication; negative comments about employer, patients, school.
 - Not only because of what you post, but also likes, shares, retweets, friends you follow, games, causes, organisations and media you like/follow



– Microsoft survey:

- 79% of employers view online information regarding prospective employees
- Only 7% of employees are aware of the possibility!!!!
- By making public posts, a person has willingly made information available for anyone to view for any purpose
- It follows then that if one does not use discretion in deciding what content to post online, one would also be incapable of exercising sound professional judgement...

– Privacy settings

- If you can label the type of relationship, do that.
- Use the highest possible privacy settings the platform allows



- Breaches of patient privacy
 - US: HIPAA,
 - SA: POPI, HPCSA – not as clear as HIPAA
 - POPI prescribes fines for unauthorised disclosure of individually identifiable health information in oral, paper or electronic form, including pictures of a patient



- Violation of patient-HCP boundary
 - What if the patient extends a friend request via FB?
 - Generally thought to be ill-advised to interact with patients via general SM platforms e.g. FB
 - HCPs can also violate a patient's personal boundary through inappropriate use of online information of a patient (e.g. googling your patient)
 - Could be OK – e.g. amnesic patient, but if spurred by voyeurism, inappropriate curiosity and habit not OK.
 - Could threaten trust – if they think you are stalking them by checking whether they are wearing their splint, or engaging in risk-taking behaviour etc.





- Licencing issues
 - Will be coming in near future for SA
 - Could result in discipline, revoking licence, suspension, health committee investigations, etc.
 - Even in SA practitioners have been fined for posting information about their patients online.





- Legal issues
 - Defamation
 - SA Labour Court in 2015 held that even evidence obtained from SM sites without permission is **ADMISSABLE**, thus could result in losing job
 - Myriad of examples of people, including HCPs losing their jobs due to thoughtless, inappropriate or unprofessional/unethical posts



Some important SA
legislative provisions
pertaining to SM
marketing and patient
care





HPCSA Rule 1: Definitions

>“*canvassing*”

means conduct which involves direct contact with prospective clients verbally or by inter alia distributing letters, pamphlets, circulars or other means of communication including printed or electronic communication, in which attention is drawn to one’s personal qualities, superior knowledge, quality of service, professional guarantees or best practice in order to secure the prospective clients’ custom”





“touting” means, but is not limited to,

- conduct which draws attention, either verbally or by means of printed or electronic media,*
- to one’s offers, guarantees or material benefits that do not fall in the categories of professional services or items, but are linked to the rendering of a professional service or designated to entice the public to the professional practice”;*





Right to fair and responsible marketing

General standards

- Not misleading, fraudulent, deceptive
- Not misleading or false representation
 - Exaggeration, innuendo, ambiguity, “puffing”
 - Overlap with HPCSA rules

Consumer Protection Act



- Bait marketing
 - Luring consumers to buy things other than that which was advertised
 - Limited stock, no real intention to supply advertised goods
 - Thus ensures availability of goods & services
- Negative option marketing
 - An agreement automatically comes into existence unless consumer DECLINES offer



- Trade coupons and similar promotions
 - Must not make offer without intention to fulfill
 - Document setting out a promotional offer:
 - Nature of prize, reward, gift, free goods/services etc.
 - Clearly state goods to which promotional offer relates
 - Steps required to accept reward, i.e. place, person, time
 - Supplier must ensure sufficient supply to accommodate anticipated demand



- Customer loyalty programs
 - Act unclear about expiry
 - Prepaid vouchers may not expire until date on which is redeemed or three years after the date on which the voucher was issued
 - Must intend to offer program/rewards
- Promotional competitions
 - May not inform person they have won if no competition
 - May not require further consideration to redeem prize after results have been made known
 - Not pay to access P.C. except reasonable postage costs for entry form
 - Must announce winners





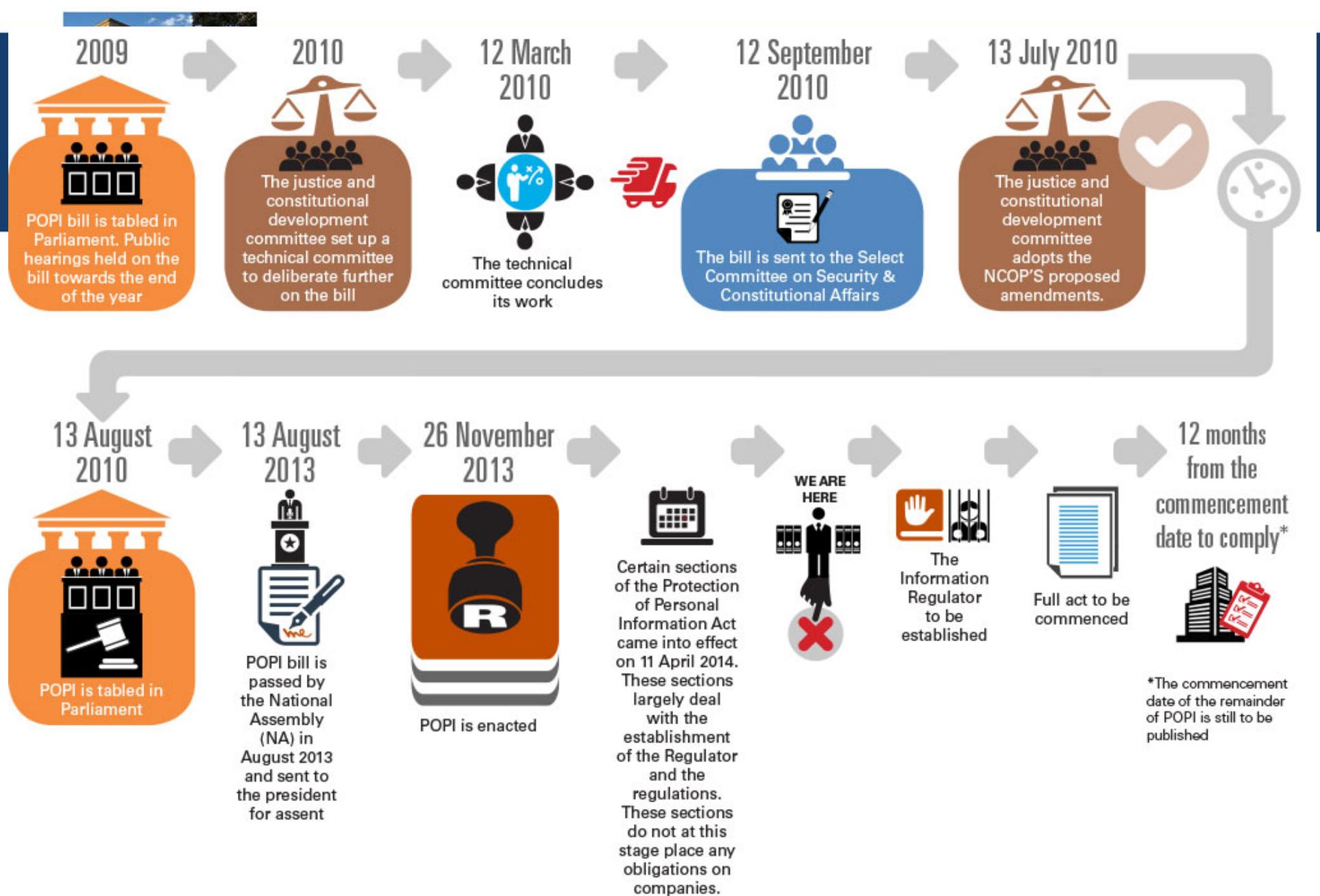
Right to fair and honest dealing

- Unconscionable conduct
- False, misleading or deceptive representations
- Fraudulent schemes and offers
- Pyramid and related schemes
- The consumer's right to assume that the supplier is entitled to sell goods
- Changes, deferrals, waivers and substitution of goods
- Over-selling and over-booking



- False, misleading or deceptive representations
 - A representation that falsely states/implies, or does not correct misapprehension on the part of a consumer that:
 - A supplier has a particular status or affiliation, connection, sponsorship or approval that he/she/it does not have (e.g. preferred provider)
 - That any goods/services have a.o. ingredients, characteristics, uses, accessories that they do not have (e.g. that horse riding improves personal management)
 - Are of a particular standard, are new or unused if not







What is consent i.t.o. POPIA?

- Any **voluntary**, **specific** and **informed** expression of will in terms of which permission is given for the processing of personal information





Personal information

- Information relating to an **identifiable, living, natural person and identifiable juristic person**, including, amongst others:
 - Age, physical or mental health, well-being, disability,
 - Relating to the education or the medical, financial, criminal or employment history of the person
 - Any identifying number, e-mail address, physical address, online identifier
 - Personal opinions, views or preferences of the person
 - The views or opinions of another individual about the person

- Any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including:
 - Collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use
 - Dissemination by means of transmission, distribution or making available in any other form
 - Merging, linking, as well as restriction, degradation, erasure or destruction of information

- Purpose of the report should determine the extent of information/disclosure
 - POPI: **Specified** purpose & information
 - Patient must know the purpose
 - Essential information vs “nice-to-know”

- PI may only be processed in relation to the purpose, thus must be relevant, not excessive
- Only if:
 - data subject consents, or
 - Necessary to carry out actions in relation to a contract to which the DS is a party, or
 - Necessary for pursuing the legitimate interests of the responsible party, or a third party to whom the information is supplied

- Religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information, or
- Criminal behaviour
 - Alleged commission of an offence
 - Any proceedings in respect of alleged offence

- Processing of medical information is prohibited, except if processing is by:
 - Health care practitioner or institution or facility if necessary for proper care and treatment of data subject
 - Insurance companies, medical schemes, medical schemes administrators
 - To assess risk to insurance co or medical scheme,
 - In performance of an insurance or medical scheme agreement, OR
 - The enforcement of any contractual rights and obligations

- Administrative bodies, pension funds, employers or institutions working for them if necessary for:
 - Implementation of the provisions of laws, pension regulations or collective agreements which create rights dependent on the health of the DS
 - The reintegration of, or support for workers or persons entitled to benefit in connection with sickness or work incapacity

- Carried out with **prior** consent of competent person
- Necessary for the establishment, exercise or defence of a right or obligation in law
- Necessary to comply with obligation of international public law
- Information was already deliberately made public by the child and a competent person consents

- Historical, statistical or research purposes to the extent that
 - it serves the public interest **or**
 - obtaining consent is either impossible or requires disproportionate effort, **and**
 - Sufficient safeguards that processing information does not adversely affect privacy of the child to a disproportionate extent
- Regulator may authorise, upon application, and may impose reasonable conditions to such authorisation

- If public interest outweighs the personal interest “to a substantial degree”
 - National security
 - Crime prevention, prosecution, detection
 - Important economic & financial interests of a public body
 - Historical & research activity
 - Freedom of expression
- Involves clear benefit to the data subject or 3rd party that outweighs “to a substantial degree” any interference with privacy of either data subject or 3rd party

- If it is necessary in terms of a contract to which the data subject is a party (e.g. medical aid contract)
- Processing complies with law
- Protects a legitimate interest of a DS
- Necessary to fulfil a public law duty
- Necessary for the legitimate interests of a responsible party or 3rd party to whom the information is supplied (e.g. HCP to defend)

Do's and don'ts regarding
marketing and patient
interaction via SM

- Practitioner privacy
- Practitioner reputation
- Patient confidentiality
- Marketing
- Employers' interests

In conclusión

- › Those who make postings about others on the social media would be well advised to remove such postings immediately upon the request of an offended party.
- › It will seldom be worth contesting one's obligation to do so.
- › After all, the social media is about building friendships around the world, rather than offending fellow human beings.
- › Affirming bonds of affinity is what being 'social' is all about.

Consider Facebook the gossipy friend we all wish we didn't have—anything you tell it, everyone knows

SM is like a crowded elevator – others can easily overhear conversations without the benefit of context

Questions?

THANK YOU

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