

EMPLOYEE RELATIONS

instructor's manual

Central Columbia Hospital

Scenario D:

Technology/
Social Media/HIPAA

By Steve Riccio, Ed.D., SPHR

PROJECT TEAM

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Please note: All company and individual names in this case are fictional.

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The case begins with introductory information about the organization and is then divided into five scenarios.

Each scenario includes question sets for **undergraduate** and **graduate** students. A debrief is included with each scenario, but because management dilemmas can be resolved using a variety of solutions, expect that students may come up with solutions that differ from those included in the scenarios. This document contains only Scenario D: Technology/Social Media/HIPAA. The scenarios are as follows:

- **Scenario A:** Transactional to Transformational HR.
- **Scenario B:** Retention.
- **Scenario C:** Talent Development.
- **Scenario D:** Technology/Social Media/HIPAA.
- **Scenario E:** Acquisition and Organizational Culture/HR Communications.

Central Columbia Hospital: Overview

Central Columbia Hospital was founded in 1889 as a nonprofit, community-based health care facility in northeastern Pennsylvania. This 116-bed, acute care facility employs 963 employees and is nestled along the Susquehanna River's northern branch in Briar Creek. The facility provides general medical and surgical services to the surrounding community of approximately 70,000 people. The hospital is proud of its tradition of upholding its mission to these communities by providing comprehensive health care services in a compassionate, caring and cost-effective manner while maintaining the highest level of professional excellence. The hospital is in the process of a yearlong celebration commemorating its 125th anniversary by partnering with the community for free monthly health screenings, hosting a summer carnival on the hospital's grounds and reaching out to local elementary schools to provide free healthy lunches each week.

Dr. George Stiller has served as the hospital's board chair for the past six years and is an obstetrician/gynecologist (OB/GYN) in the community. Stiller has lived and practiced in this community for more than 37 years and has delivered many employees of the hospital. He is known for being kind, gentle and truly caring, and can recall almost everyone in the hospital by his or her first name. Employees often seek Stiller's sympathetic ear to express concerns about everything from staff-to-patient ratios to the cafeteria food. Stiller takes a hands-on approach to his duties as chair and voiced strong concerns about the hospital's recent national search for a new president and CEO. Stiller pushed to keep the search close to home and cautioned the board of potential consequences to hiring a noncommunity member into such a pivotal role. In the end, however, the board launched a national search that resulted in hiring Anita Green. Green previously served as the chief operating officer for two community hospitals in Michigan and Indiana. Although Stiller plays quite a visible role in his position, the balance of the board members see their roles as ones of governance, not focusing on daily operations. As a matter of fact, most agree the day-to-day decision-making should be left in the capable hands of Green. Green knows that Stiller wanted to keep the president and CEO search at a local level. This created some tension between them when Green arrived to Central Columbia, and this tension still plays out occasionally during board meetings.

Green has been with Central Columbia Hospital for a little more than three years. When she joined the hospital, it was financially hemorrhaging from every service line. In the past three years, however, she and her team have turned obstetrics, radiology, gastrointestinal, and out-patient laboratory and surgery into revenue-producing service lines. Green is still concerned about emergency services, general surgery, orthopedics and critical care services. She knows that staffing these services with competent and experienced staff is essential to getting these areas to perform at the levels needed to make the hospital financially solvent.

Green knows that other areas of the hospital also need attention. Compliance in this heavily regulated industry continues to create substantial challenges, including a strain on the hospital's human resources (HR). Green feels the hospital is vulnerable to legal risks without a position completely dedicated to addressing HIPAA (the Health Insurance Portability and Accountability Act), Medicare issues, and regulations associated with the Pennsylvania Department of Health and the Joint Commission's criteria such as staff educational requirements, orientation documentation, patient care, and safety protocols and procedures.

Green has asked the board to approve a corporate compliance officer position as a member of the executive team. The current risk manager, William Toth, has said that he is not interested in expanding his scope to encompass all compliance issues and prefers to stay focused on patient safety goals. He has made great strides in the internal reporting procedures for patient-care incidents, and although the numbers are higher than they were two years ago, Toth sees this as a success because the hospital now has a better understanding of the issues and has started processes to implement appropriate changes.

Patient satisfaction has been on the rise, but it is still well below where Green and her team would like it to be. With an overall patient satisfaction rating of 78 percent, Green and her team know there is still a lot of work to do to reach a 90 percent satisfaction rate (a goal that is 5 percent above the national average), a target she set shortly after she arrived at Central Columbia. Although many patients feel the care is competent, the hospital still lags in satisfaction regarding communication of medical care to patient and family members and timeliness of treatment. The executive team, including the newly appointed vice president of patient care services and chief nursing officer, Ann Romero, has suggested that these scores may reflect a delay by nursing staff to inform attending physicians of a patient's status. Others on Green's team are concerned that her patient satisfaction goal is too lofty too soon, and they feel it has caused stress and morale issues in several areas of the hospital.

Green set the 90 percent patient satisfaction rate goal as a result of a patient and employee satisfaction survey conducted two years ago. Since then, the hospital has continued to participate in the survey process on an annual basis. These surveys have provided valuable data that have allowed Green and her team to establish several operational and patient care improvement initiatives. Green used the weeklong celebration of National Hospital Week in May to share the results with employees during her town hall talks. Green has used several occasions such as National Hospital Week to celebrate and educate employees on the important work they do and the reasons why it is necessary to continue to improve. Green has addressed several questions regarding the rumors of mergers during these meetings, and she is always candid about the real possibilities and the need for improvement.

| Table 1. Patient Satisfaction—Most Recent Annual Report (Compared to Peers, State and National Average) | | | | | |
|--|-------------------------|---------------------|---------------------|----------------------|-------------------------|
| Percentage of patients who: | Central Columbia | Competitor A | Competitor B | State Average | National Average |
| Reported that staff “always” explained medicines before administering. | 59% | 57% | 63% | 62% | 64% |
| Reported that their room and bathroom were “always” clean. | 65% | 70% | 73% | 73% | 73% |
| Reported that the area around their room was “always” quiet at night. | 54% | 52% | 48% | 54% | 61% |
| Reported that yes, they were given information about what to do during their recovery at home. | 86% | 86% | 87% | 86% | 85% |
| Gave their hospital a rating of 9 or 10 on a scale from 0 (lowest) to 10 (highest). | 62% | 66% | 75% | 69% | 70% |
| Reported that yes, they would definitely recommend the hospital. | 62% | 69% | 78% | 69% | 71% |
| Overall | 78% | 81% | 71% | 84% | 85% |

Table 2. Selected Results from the Most Recent Cultural Assessment—Survey of All Central Columbia Hospital Employees

| Question | Previous Year | Current Year |
|---|---------------|--------------|
| I would recommend employment here. | 66.0% | 62.3% |
| I am proud to work for this organization. | 73.2% | 71.6% |
| I often leave work with a feeling of satisfaction. | 82.4% | 83.1% |
| I have considered leaving during the past six months. | 47.8% | 51.5% |
| I feel there are opportunities for long-term growth at the hospital. | 62.3% | 60.4% |
| I would recommend the hospital to others considering health services. | 78.2% | 77.0% |

In addition to the changes Green is suggesting in the compliance area, she is also working closely with the current HR manager, Frank Scott. Scott has been with the hospital for 26 years and has been successful at processing the transactional work required to meet employee demands. It has become evident to Green, though, that Scott does not possess the knowledge and leadership skills needed to move this function to a more strategic level. Green is hoping to convince her executive team that it is time to begin a search for an individual who can move the HR function from being reactionary to one that will be instrumental in transforming the hospital. Scott currently reports to Jeff Curry, chief financial officer, but Green's vision is to have the vice president of HR report directly to her. Green's short list of issues for HR seems to grow longer every day, and she needs that function to partner with her to ensure success. Compensation, hiring practices, retention, talent identification and development, and diversity are just a few of the items that Green knows need to be addressed by the hospital to remain competitive.

This freestanding community hospital has also been faced with maintaining its independence while being surrounded by two larger, growing health care systems. Although the hospital has been successful to date operating independently, the increased demand for specialized services and the shrinking reimbursement and payment for services are forcing Central Columbia to evaluate two possible moves to assist in providing the most comprehensive short- and long-term health care possible to the communities for which it cares.

Figure 1. Hospital Organizational Chart

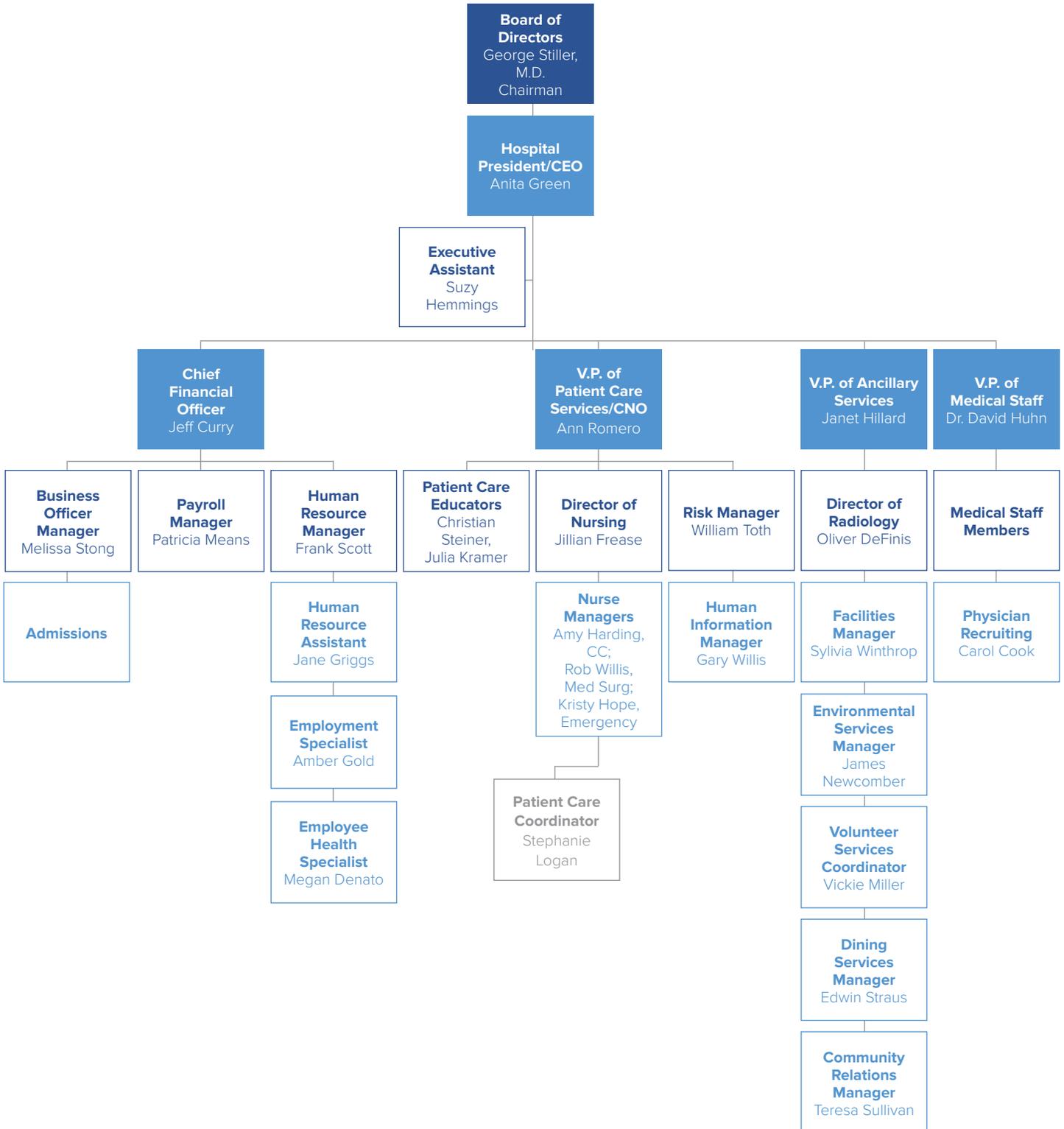


Table 3. Employee Count by Ethnicity and Gender

| Total Number of Full-Time Employees: 963 | | |
|---|----------------------------|-------------------|
| Ethnicity | Number of Employees | Percentage |
| White (Not Hispanic) | 788 | 81.8% |
| Black (Not Hispanic) | 95 | 9.8% |
| Hispanic | 64 | 6.7% |
| Asian/Pacific | 16 | 1.7% |
| Gender | Number of Employees | Percentage |
| Female | 541 | 56.2% |
| Male | 422 | 43.8% |
| Job Classification | Number of Employees | Percentage |
| Exempt | 433 | 45.0% |
| Nonexempt | 530 | 55.0% |

Scenario D:

Technology/Social Media/HIPAA

Players

- Frank Scott, HR manager
- Ann Romero, vice president of patient care services and chief nursing officer (CNO)
- Gary Willis, health information manager
- Sara Donaldson, outside legal counsel

In Frank Scott's office

Ann Romero, Gary Willis and Frank Scott are gathered in Scott's office to discuss a current employee relations issue dealing with the online activity of seven hospital employees.

"Thank you all for coming together on such short notice. Frank has informed me of the situation, and I am very concerned that we may have multiple facets to this problem," said Romero.

Scott interjected, "When this issue was brought to me this morning I immediately contacted Ann. I believe we may have HIPAA [Health Insurance Portability and Accountability Act] violations and possibly other compliance concerns."

Romero was referring to an exchange via social media that occurred among six patient care services employees (three nurses and three nursing assistants) along with an employee from medical records. They were discovered having a conversation about the characteristics of a current patient on Friday between 10:30 a.m. and 2 p.m. on a popular social media website. None of the employees involved in the conversation were on duty at the time. The nurses and the nursing assistants work during the second shift, and the employee from medical records was on vacation that day. A HIPAA breach and the hospital's Code of Conduct violations are now under review.

Romero continued, "I think we all knew it was only a matter of time before we came together to discuss employee behavior on social media and its potential impact on the hospital."

An e-mail of the screen shots capturing the conversation was distributed to the meeting participants, and Gary Willis provided handouts before the discussion began. The following employees participated in the online conversation:

- Tammy Denato, RN.
- Christopher Simmons, RN.
- Renee Philips, RN.
- Charles Sotherby, nursing assistant.
- Holly Smith, nursing assistant.
- Amy Gold, nursing assistant.
- Stephanie Cook, medical records specialist.

Below is the exchange of comments:

Christopher: “So glad to be out of CCH for the next two days! Have had a bear of a patient to deal with tonight.”

Renee: “I bet I can guess which one! Really big guy on MedSurg 2? He was also a pain yesterday.”

Christopher: “Yep, talk about growling at everything you ask him to do.”

Holly: “I worked on MedSurg 2 yesterday with Renee. He was really tough, and I was at the end of an unscheduled double shift . . . something better change soon with the hours the hospital expects.”

Amy: “I agree, Holly. All this overtime doesn’t really cut it, even at time and a half. The nursing assistants make only a little more than minimum, and honestly, it just isn’t enough for what they are asking us to do day in and day out.”

Tammy: “The hospital keeps telling us that they are recruiting, but the new RNs they’re bringing in just don’t have the experience, but I guess they can pay them a lot less, so hey, why not just continue to expect more of us?”

Charles: “The number of patients they ask nursing assistants to care for is ridiculous! No wonder we have patients growling at us like the big guy on 2. Can we blame him? He was in for a simple respiratory infection, and now can’t even get a meal while it’s hot. We are just being asked to do too much!!!”

Stephanie: “I hear you guys. In medical records we see how many patients are in the house, and we also see the low staffing levels! I feel for you guys . . . working so many hours and then dealing with a patient who is growling for everything.”

Christopher: “CCH better make some changes, or I’m out of there! I also think several other RNs and nursing assistants will be right behind me.”

Willis responded to Scott’s earlier comments about a possible HIPAA infraction, “Well, after reviewing the online conversation, I really can’t say for sure if this would be considered a HIPAA violation.”

“Okay, folks, let’s not get ahead of ourselves with what violations there are or aren’t because I’m not even sure we have all the facts at this point,” said Romero.

“That’s true. We should slow down and try to gather as much information as we can before we make too many judgments,” Scott said. “Ann, have you had a chance yet to speak with the employees from patient care services about what happened?”

“No, I haven’t been given their work schedules, and the employee from medical records is on vacation. I have telephone calls in to each of the nurses and nursing assistants and am requesting they each come in before the start of their shifts this afternoon to speak with me,” said Romero. She looked at Scott. “Frank, I would like you and me to get in touch with Sara [Sara Donaldson, outside counsel] and brief her on what we know so far. I believe we will need her guidance as we move through this process. Can you stick around to call her as soon as we are done here?”

“Sure,” said Scott.

“Ok, so let’s lay out the facts that we have at this time,” said Romero. “So, Frank, how did this situation come to your attention?”

“One of the patient care services employees stopped me in the hall this morning and said she had something she wanted to discuss, and asked if I had a few moments before she went home after her shift. I met with her, and she began by saying that several of her co-workers were talking on social media yesterday about work and that she was uncomfortable with some of the comments made about the hospital and working conditions, especially the recent uptick in overtime, the current staffing ratios, etc.,” said Scott.

“So, her initial concern wasn’t about the part where they discuss a patient?” asked Romero.

Scott replied, “I don’t think she or any of the employees think that anything was wrong with that part of the discussion because they didn’t use the patient’s name, medical record, address or any other truly protected health information.” Romero gave a puzzled look, mildly concerned at this attitude.

Scott continued, “The employee who brought this to me said she knows that we have a Code of Conduct and strict guidelines about making public remarks about the hospital.” Central Columbia has had a Code of Conduct in its employee handbook for the past five years that addresses the use of electronic media in very broad terms. “At the time the statement was implemented, every employee was required to sign off indicating he or she had read and understood the statement,” said Willis. “We worked closely with Frank’s team to put a process in place in which all new employees are required to do the same.”

Frank distributed a copy of the Code of Conduct. Below is the excerpt relevant to this incident:

We adhere to all established confidentiality and privacy standards, policies and regulations including the Health Insurance Portability and Accountability Act (HIPAA). We actively protect and safeguard patients’ health information and respect patient privacy in all forms, including paper, electronics, verbal and telephone.

We adhere to the highest ethical and accountability standards. Central Columbia Hospital’s staff will uphold and further the mission and values of Central Columbia Hospital in all professional and personal representation of our organization.

We will treat all patients, families, co-workers and vendors with respect and dignity.

We will represent ourselves and Central Columbia Hospital in a professional and positive manner at all times and in all forms of communication, including paper, electronic, verbal and telephone.

We will direct concerns, grievances, conflicts and suspicion of fraud or wrongdoing to the appropriately identified organizational representative or to the compliance hotline.

After the meeting concluded, Romero and Scott stayed to call Sara Donaldson.

“Hello, Sara, this is Frank Scott and Ann Romero. How are you?” asked Scott.

“I’m guessing a little better than both of you right about now,” replied Donaldson.

Scott said, “Yes, I guess you reviewed the e-mail I sent earlier this morning.”

“I did,” she replied.

The e-mail Scott sent to Donaldson outlined the particulars of the incident. Donaldson asked a few clarification questions before addressing their concerns. “The last thing the hospital wants to do in this case is be viewed as retaliatory given the nature of these comments,” Donaldson said. She continued, “I am troubled, however, that they included patient characteristics in their conversation. While it may appear vague, it was too much information in my view.”

Romero continued, “I’m not sure why these employees feel the need to air their frustrations on social media. We have employee discussion groups each month, and everyone is free to raise whatever questions, ideas or concerns they have. In fact, I make sure I am at every one of those meetings. We started these several months ago, and I feel they have been very positive.”

“Have they been well attended?” asked Scott.

Romero replied, “I believe they have, although we simply can’t get every employee to each of the meetings.” She continued, “Frank, do we have a social media policy to address this and future situations?”

“I’m afraid we don’t,” Scott said.

“I think this is great that you have a statement that discusses HIPAA and the protection of patients’ rights. It also seems that you have a sound process in place to ensure compliance,” Donaldson said. “However, so much has occurred with social media over the past five years. We need something that provides employees with the proper guidance. I recommend that you continue with your plan to meet with each employee and gather as much information as possible. You may have a HIPAA concern because these employees gave enough details about this patient that others might be able to determine who was being discussed. This also gets muddy because employees were talking about the terms and conditions of their employment, and that is protected concerted activity under the Wagner Act, or the National Labor Relations Act.”

“I’m not sure I follow you. How can these employees be protected if they were clearly violating our Code of Conduct and HIPAA?” asked Romero.

“I’m not saying all of their activity is protected, but the conversation where they are talking about overtime, staffing, etc., is protected,” said Donaldson.

“Employees should not be able to speak poorly about their employers in any public forum and not have consequences,” said Romero.

SCENARIO D: QUESTIONS FOR UNDERGRADUATE STUDENTS

1. Based on the information provided, do any or all of the statements made by employees on social media warrant discipline?
2. How should the hospital address the employees' behavior in this situation? Explain your rationale.
3. In your opinion, does the current Code of Conduct provide enough guidance for employees and the organization about the use of social media, or does this situation require developing a formal social media policy?

SCENARIO D: QUESTIONS FOR GRADUATE STUDENTS

1. How should employee use (or misuse) of social media factor into an overall disciplinary system?
2. Discuss the challenges employers face when addressing the use of social media through the creation of a policy. Discuss whether you believe the policy should be specific to social media, or if it should be more comprehensive and address issues such as code of conduct, all electronic communications and other employee expectations.

Debrief

SCENARIO D: QUESTIONS FOR UNDERGRADUATE STUDENTS

1. Based on the information provided, do any or all of the statements made by employees on social media warrant discipline?

Employers have a legitimate business reason to monitor employees' online behavior regarding the workplace, to minimize legal exposure, to safeguard sensitive institutional information and to ensure employee productivity (Genova, 2009). Most private employers also benefit from the employment-at-will doctrine, which specifies that an employer can terminate any employee for good cause, no cause or for any reason as long as there is no contractual relationship, public policy violation or discriminatory motive (DeCenzo, Robbins, & Verhulst, 2013). Organizations can also establish policies and procedures to hold employees accountable for following these policies and procedures and to take appropriate action against employees found in violation.

Central Columbia's Code of Conduct identifies specific behaviors that are prohibited by its employees. Although there is nothing to prevent the hospital from establishing such rules and regulations, in this situation, it may not be as simple as disciplining for a breach of such a policy.

Several factors go into an organization's decision to discipline or terminate an employee for a breach of company policy. Each organization should carefully evaluate a decision to discipline. Factors to consider include:

- Reasonableness of the rule.
- Notice of the rule.
- A fair and objective investigation of the alleged breach.
- Consideration of the facts to substantiate the outcome of the investigation.

- Consideration of whether the proposed discipline is consistent and equitable with other disciplinary actions.
- Consideration of whether the proposed discipline is appropriate for the infraction.

Only after Central Columbia has thoroughly contemplated all these areas can a decision to discipline be made by the organization.

In the scenario, Central Columbia's Code of Conduct appears to be reasonable based on regulations regarding privacy and the hospital's desire to maintain a positive public image. All employees were notified about and acknowledged receiving the Code of Conduct. Central Columbia has even implemented a procedure to educate new employees joining the organization. The investigation, as described in the scenario, appears to be fair; all the employees involved in the online incident will be questioned and evaluated.

Although the hospital does not specifically address the issue of past disciplinary concerns, the management representatives for the hospital made statements such as "I think we all knew it was only a matter of time before we came together to discuss employee behavior on social media and its potential impact on the hospital," indicating that this may be the first time the hospital is dealing with a situation of online conduct and potential discipline, so consistent treatment may not be as much of a factor with this case. The appropriateness of the discipline, if any, should be determined by the leadership team and outside general counsel.

The hospital must determine whether to discipline the employees involved in this incident. Central Columbia has legal ground to take action against the employees for some of the statements made on social media. Employees should not have an expectation of privacy or an expectation that discussing the hospital's business in a public social media forum would not result in consequences. Recent court decisions such as *Roberts v. CareFlite* (2012) have stated that observing a terminated employee's Facebook rant is "not within the zone of her seclusion, solitude and private affairs," further asserting an employer's prerogative to discipline and terminate based on social media postings (Ghoshray, 2013). Central Columbia must, however, thoroughly understand all aspects of the online conversation and weigh those against the employees' rights under certain legislative and regulatory acts such as employment at will, National Labor Relations Board (NLRB) guidelines and HIPAA.

2. How should the hospital address the employees' behavior in this situation? Explain your rationale.

Central Columbia must move forward with an investigation of the online behavior, possible HIPAA violations and the possible breach of the hospital's Code of Conduct. Once a complaint is filed or the employer has knowledge of a potential violation of a statute, the hospital has an obligation to thoroughly investigate the allegation and make a determination or recommendation, and implement corrective action, as necessary.

In the case of the online conversation among employees discussing a patient, the hospital must determine if a HIPAA violation has occurred. HR professionals typically encounter HIPAA as it relates to health insurance plans and plan administration, particularly those that are self-insured. But in this case, Central Columbia is a health care provider, so HIPAA regulations extend to all employees and their access to and disclosure of protected health information (PHI) (DeCenzo et al., 2013). According to HIPAA regulations, PHI is any information for which there is a reasonable basis to believe it can be used to identify an individual. In this scenario, although no specific information such as name, medical record number and address or Social Security number was disclosed, Central Columbia must determine if enough detail was shared that the individual could be reasonably identified (U.S. Department of Health and Human Services, 2014). Multiple employees in the scenario were able to identify the patient being discussed, and thus this scenario may have reached the threshold identified in the HIPAA regulation.

Central Columbia must also investigate to determine if the hospital's Code of Conduct was violated. Here the hospital has a different standard than the information related to HIPAA regulations, and yet making an accurate and consistent decision may be more complicated. The Code of Conduct addresses behavior as it relates to privacy, but privacy will primarily be addressed through the investigation for a HIPAA breach. The hospital must also make a determination, however, about representing Central Columbia Hospital in a professional and positive manner in all forms of communication. This issue is more likely to result in confusion because the distinction between what is a private conversation among employees and what are public comments is less than clear. Central Columbia will have to weigh the rights of employees against the hospital's right to protect its image.

The hospital will also need to consider the ramifications of recent NLRB rulings clarifying employees' rights to "protected concerted activity" and the use of social media. Recent guidance from the NLRB has made it

clear that conversations held on social media among multiple employees from the same organization discussing the terms and conditions of employment (wages, hours, working conditions) is a protected activity, and thus employees cannot be disciplined, terminated or retaliated against for such activity (NLRB, 2014).

Although Central Columbia maintains the right to develop, implement and enforce company policy, its current Code of Conduct may not be an appropriate vehicle to use as a basis to discipline for online social media content. The hospital may be required to take corrective action related to the activity regarding the discussion and identification of a patient; however, the discussion about working conditions, hours and wages is best considered a “concerted activity” with no corrective action taken by the hospital. Central Columbia Hospital can and should consider a training program to guide employees regarding their online behavior to better protect its business reputation (Zielinski, 2014).

3. In your opinion, does the current Code of Conduct statement provide enough guidance for employees and the organization about the use of social media, or does this situation require developing a formal social media policy?

Policies are written and implemented to provide consistency and transparency and to maintain accountability in an organization. Some policies, such as the Code of Conduct at Central Columbia, deal with specific behavioral expectations the organization has of its employees. An organization should determine when a policy is needed based on safety, quality and regulatory compliance concerns. Policies are not laws; they should be designed as guidelines organizations use to regulate employee expectations and behaviors, and to provide general knowledge.

The hospital’s Code of Conduct outlines specific behavioral expectations of employees. It clearly identifies the safety, quality and regulatory expectations of employees as they relate to behavior when at the hospital and when representing the hospital. The Code of Conduct, however, fails to identify the expectations of employees while off duty and off hospital property. Its use of terminology such as “at all times” without specifying during working and nonworking hours leaves some room for reader interpretation. And employees may feel that they are being overly regulated and controlled.

The hospital may consider implementing a policy that directly and clearly addresses expectations of employees and their use of social media; however, a policy should be considered only if the hospital believes it to be vital to safety, quality or compliance concerns. Creating a policy out

of a reaction to an isolated incident may lead to an over-proliferation of policies that may diminish the consistency and transparency with which the organization is managed.

Social media use and employee expectations related to their own use of social media are emerging areas of concern for many employers. According to a study conducted by Proskauer (2014), an international labor and employment law firm, many employers have needed to address social media use and the implementation of policy due to the increase in misuse of social media by their employees, including online bullying, harassment and making disparaging remarks about their employers. SHRM (n.d.) has identified several guidelines for developing a social media policy, such as making sure employees understand that they are solely responsible for what they post online. The sample guidelines specify that online conduct that adversely affects the individual's performance, the performance of co-workers, or others such as customers, vendors or any legitimate business of the organization may result in disciplinary action.

The NLRB (2014) provided recent guidance on the language and scope of online policies as they relate to "concerted activity." As additional decisions regarding language and scope of online activity and policies are rendered by the NLRB and the U.S. courts, the landscape of social media and organizational management will continue to evolve. Any policy that the hospital considers implementing should be flexible enough to deal with this changing landscape and must be reviewed, revised and recommunicated on an ongoing basis.

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Debrief

SCENARIO D: QUESTIONS FOR GRADUATE STUDENTS

1. How should employee use (or misuse) of social media factor into an overall disciplinary system?

Organizations like Central Columbia are responsible for providing employees with expectations of employee behavior and performance in the workplace. Many experts encourage organizations to develop social media policies. In addition to creating and implementing policies, employers are now developing other strategies and precautions to minimize the misuse of social media and to inform employees how to best use social media (Proskauer, 2014). Incidents of employee misuse of social media or misrepresentation of their organizations in social media outlets, the proliferation of social media platforms, and the explosion of social media users are requiring organizations to assume that employees are posting on social media.

With employee use of social media on the rise, many HR departments are struggling to find the balance between employee privacy rights and the organization's right to ensure productivity and to protect its public image. The social media landscape continues to evolve; recent rulings on cyberbullying, harassment, concerted activity and employee privacy are just a few of the challenges currently being addressed by HR professionals and their employers (Xpert HR, n.d.). These rulings, however, are not keeping pace with the speed at which the landscape of social media changes. New social media outlets are popping up at a much more rapid rate than courts and legislators can address (DeCenzo, Robbins, & Verhulst, 2013).

Organizations are left with creating procedures to discipline employees when they represent themselves and the organization in a disparaging manner. Organizations maintain the right to protect their property, and this includes the use of company equipment in the communication of any message. Companies also maintain the right to protect their

corporate images and information, and to set policies outlining employee behavior expectations regarding these topics. The current question challenging HR professionals is where the employer's rights end and the employee's right to privacy begins. Many policies attempt to provide specific guidelines on acceptable and unacceptable behavior related to an online presence, whereas others continue to bundle social media in standards of conduct or general electronic media communication policies. Either way, discipline may enter into the picture when employees do not meet the rules and standards of acceptable behavior. The employment-at-will doctrine allows organizations to sever the employment relationship when identified rules and standards of acceptable behavior are not met by the employee. Exceptions to the employment-at-will doctrine continue to increase as courts and regulatory agencies issue decisions regarding the appropriate scope of the employer's rights and social media.

Employers should provide general guidelines for social media behavior that are flexible enough to keep up with the pace and variety of issues regarding social media use while being specific enough that employees understand the rules and standards of acceptable behavior. Discipline should be carefully considered by employers before corrective action is taken. Employers should aggressively protect their proprietary information and yet be aware of public sensitivities and potential liabilities due to new rulings from courts, the NLRB, and state and federal regulations to ensure that they administer discipline without infringing on employee rights (Poerio & Bain, 2012).

2. Discuss the challenges employers face when addressing the use of social media through the creation of a policy. Discuss whether you believe the policy should be specific to social media, or if it should be more comprehensive and address issues such as code of conduct, all electronic communication and other employee expectations.

In today's rapidly changing social media and employment environments, organizations are faced with the challenge of minimizing risk exposure due to employee online activities. The decision to create, implement and maintain a policy designed to manage these particular challenges often falls to the organization's HR professionals. Central Columbia has an organizational Code of Conduct that loosely addresses the challenges of maintaining compliance with privacy regulations while preserving the company's proprietary information, including its public image.

In light of the risks and elevated exposure social media brings to the workplace, it is critical to create a policy that provides guidance and outlines the potential liabilities to both the organization and its employees through the use of social media. The health care industry can be particularly vulnerable because providers are also required, through federal regulation (HIPAA), to safeguard and protect patient information (Hamer, 2013).

Careful consideration should be involved in creating a comprehensive social media policy. Central Columbia should convene a cross-functional team that includes representation from a variety of areas in the organization, such as marketing/communications, HR, risk management, patient care services, social media users, organization executives and the information technology department (Jones, 2012).

A social media policy should take a different form than other organizational policies. Because the social media landscape is changing rapidly, Central Columbia should consider creating a policy that deals more with creating and maintaining a respectful culture as it pertains to social media than a traditional policy of specific do's and don'ts. The social media policy should also be integrated with other hospital policies that address electronic communications such as e-mail and the Internet and use of company property such as cellphones. It should also be incorporated into the Code of Conduct, patient privacy and general employee behavioral expectations. This cross-referencing ensures that all policies echo the same respectful culture as the social media policy (Jones, 2012).

Central Columbia must consider and maintain compliance with all legal requirements. Discrimination, harassment and NLRB concerns must be fully addressed. Social networking and electronic communications have increased, and this creates a new environment for employees to have unlawful conversations, furthering workplace harassment and discriminatory acts. Employees "friending" co-workers has also led to more employees posting comments that other employers may find disparaging, and yet may be protected activity under NLRB rules. Central Columbia must thoroughly address the consequences for employees who violate any regulations and include an outline of disciplinary measures the hospital may take with an employee who violates the social media policy, up to and including termination. Central Columbia must ensure, however, that policy statements are not sweeping statements that may be seen as restricting employees' rights to engage in concerted activity.

Any policy consideration for the hospital should also include a training component. Employees must be trained on the appropriate and preferred uses from a professional perspective—how to represent the hospital in an official capacity—and from a personal perspective—how to manage social media activity during nonworking times. This training should include basic expectations about when and how to use the hospital’s proprietary information such as name, logo and confidential communications. The training should also cover the expectations the hospital has of its employees as relating to posting pictures (especially those that are tagged as being in hospital locations); using discriminatory, harassing or defamatory language toward co-workers; and representing content as personal opinions and not the opinions of the hospital. Again, the hospital must be cautious not to limit employees’ right to discuss working conditions, wages or hours. Central Columbia should also ensure that employees have a direct and easily accessible avenue to discuss any work-related issues or concerns with members of the management team.

A social media policy can provide the foundation to a healthy digital footprint for Central Columbia and its employees. The social media policy should be reviewed on a regular basis and on a more frequent basis than other policies because the social media environment and legal landscape affecting social media are always evolving. As with all decisions to implement a policy, Central Columbia should refrain from overreacting to an isolated employee incident, but look at creating a social media policy as an opportunity to further enhance employee engagement and reaffirm employee expectations.

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