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Professionalism in the Era of Social Media

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Introduction

- ▲ In the era of social media, individuals have more opportunities than ever to express themselves in the public sphere
- ▲ If you happen to be a regulated professional and are expressing your views on social media, are there special considerations that govern?
- ▲ Professionals and regulators must grapple with the impact of social media

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Social media

- ▲ Social media is "computer-based technology that facilitates the sharing of ideas, thoughts, and information through the building of virtual networks and communities"
- ▲ Use is now ubiquitous
 - 33.51 million users in Canada
 - 73% of Canadians use social media daily

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Social media

- ▲ Issue is not social media or communication technology itself, but how it's used
- ▲ Social media posts have many similarities with other verbal or written comments, but there is something unique to them as well
- ▲ Societal (and perhaps generational) views about the use of such media to express views can conflict with some traditional professional expectations

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Social media

- ▲ Social media use by professionals creates tension among the principles of:
 - protection of freedom of expression,
 - protection of a professional's "private life", and
 - the right of regulators to engage when off-duty conduct impacts professional status

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Social media and unprofessional conduct

- ▲ Becoming a member of a regulated profession comes with benefits but also costs
- ▲ Regulators can impose requirements relating to civility, respectful communication, confidentiality, advertising, and other matters that impact freedom of expression
- ▲ Failing to abide by such rules can be found to constitute unprofessional conduct

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Social media and unprofessional conduct

- ▲ Professional bargain does not require that professionals fall completely silent
 - Recognized that professionals are also family members, and community and political volunteers, who communicate with friends and others on social media
- ▲ It does, however, allow the regulator to impose limits and to impose discipline for improper communications

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Social media and unprofessional conduct

- ▲ Examples of unprofessional conduct finding related to social media use
 - *Ontario (College of Physicians and Surgeons of Ontario) v. Wright*, 2018 ONCPSD 19 – physician engaged in explicit and graphic intimate and sexual behaviour with multiple women on Facebook
 - *Ontario (College of Physicians and Surgeons of Ontario) v. Jugenburg*, 2020 ONCPSD 40 – physician posted images of patient's breast on Snapchat and Instagram without consent

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Social media and unprofessional conduct

- ▲ Examples of unprofessional conduct finding related to social media use
 - *College of Nurses of Ontario v Cosgrove*, 2019 CanLII 132966 (ON CNO) – Registered Nurse posted about the death of individual on Facebook
 - *Ontario (College of Physicians and Surgeons of Ontario) v. Waddell*, 2020 ONCPSD 9 – Physician made unprofessional and offensive Facebook posts which were inflammatory and threatening

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Social media and unprofessional conduct

- ▲ Examples of unprofessional conduct finding related to social media use
 - *Ontario (College of Massage Therapists of Ontario) v Basmanov* – Massage therapist posted inappropriate content on his publicly accessible Facebook page that was critical of face masks during the COVID-19 pandemic
 - *Ontario (College of Physicians and Surgeons of Ontario) v Phillips* – College pursuing allegations with respect to Twitter posts about pandemic

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Social media and unprofessional conduct

- ▲ Code of Ethical Conduct for Alberta Physiotherapists
 - Maintain professional boundaries that honour and respect the therapeutic relationship with clients.
 - Communicate openly, honestly and respectfully with clients at all times.
 - Respect the confidentiality, privacy, and security of client information in all forms of communication.
 - Use electronic communication and social media and other forms of digital technology professionally and respectfully, conforming to confidentiality guidelines.

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Social media and unprofessional conduct

- ▲ Standards of Practice for Physiotherapists in Alberta
 - **Advertising:** The physiotherapist advertises in a manner that is truthful, accurate, verifiable, not misleading to the public, and in compliance with regulatory requirements.
 - **Communication:** The physiotherapist communicates clearly, effectively, professionally, and in a timely manner to support and promote quality services.
 - **Privacy/Confidentiality:** The physiotherapist respects clients' rights to privacy and confidentiality of personal information including health, financial, and other information by practicing in compliance with applicable legislation and regulatory requirements.
 - **Professional Boundaries:** The physiotherapist acts with professional integrity and maintains appropriate professional boundaries with clients, colleagues, students and others.

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Social media and unprofessional conduct

- ▲ Regulator's approach to assessing whether communications warrant discipline should allow for a balancing of the regulator's statutory objective to protect the public with the professional's ability to express themselves
- ▲ Balancing involves examining the value of the impugned speech

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Social media and unprofessional conduct

- ▲ A contextual analysis is needed to assess the speech and its value
 - Speech that is professional advocacy or that promotes public discussion/discourse will receive greater protection than advertising or unsupported attacks or rants
- ▲ Take into account the context of a particular to an individual case before making determination on balancing

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Social media and unprofessional conduct

- ▲ Contextual factors
 - whether speech was made while on duty or otherwise acting as a professional;
 - whether the professional identified themselves as such;
 - the extent of the professional connection between the professional and the other party;
 - whether the speech related to services provided to the professional or their family or friends;
 - whether the speech was the result of emotional distress or mental health issues;

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Social media and unprofessional conduct

- ▲ Contextual factors
 - the truth or fairness of any criticism;
 - the extent of publication and the size and nature of the audience;
 - whether the expression was intended to contribute to social or political discourse about an important issue; and
 - the nature and scope of the damage to the profession and public interest

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Discipline for off-duty conduct

- ▲ Professionals do not have to account to their regulators for every aspect of their personal life if there is no impact on the profession
- ▲ But some types of "off-duty" conduct can affect professional status
 - Social media has the potential to blur the boundaries between private and professional

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Discipline for off-duty conduct

- ▲ The rationale for why "off duty" conduct may amount to unprofessional conduct is the result of:
 - the unique position of trust held by professionals; and
 - society's expectation that a professional will conduct themselves in all their affairs in a manner that is beyond reproach

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Discipline for off-duty conduct

- ▲ *Erdmann v. Institute of Chartered Accountants of Alberta*
 - "Professionals in every walk of life have private lives and should enjoy, as much as possible, the rights and freedoms of citizens generally. A chartered accountant's status in the community at large means that his/her conduct will from time to time be the subject of scrutiny and comment. While acknowledging the legitimate demands of one's personal life, and the rights and privileges that we all enjoy, private behaviour that derogates from the high standards of conduct essential to the reputation of one's profession cannot be condoned. It follows that a chartered accountant must ensure [sic] that her conduct is above reproach in the view of reasonable, fair-minded and informed persons"

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Discipline for off-duty conduct

- ▲ Off-duty conduct may be unprofessional conduct if there is a sufficient nexus or relationship between the personal conduct and the profession to engage the regulator's obligation to promote and protect the public interest
- ▲ More specifically: was the impugned conduct such that it would have a sufficiently negative impact on the ability of the professional to carry out their professional duties or on the profession to constitute unprofessional conduct?

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Discipline for off-duty conduct

- ▲ Contextual analysis needed to determine if there is a nexus between the off-duty conduct and the profession that demonstrates a sufficiently negative impact on the profession or the public interest
- ▲ Answer turns on all the circumstances of a case

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Discipline for off-duty conduct

- ▲ Summary
 - While a professional does not need to remain silent on social media, a regulator can impose limits and discipline individuals for postings
 - Posting on social media, even if not connected to professional services, can constitute unprofessional conduct
 - If a contextualized analysis demonstrates that social media posts result in a sufficiently negative impact on the professional, the profession, or the public interest, a finding of unprofessional conduct will likely be upheld

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Strom v Saskatchewan Registered Nurses Association, 2020 SKCA 112

- ▲ Example of how these principles apply to a professional posting on social media
- ▲ Court of Appeal decision provides important guidance on the legal issues and demonstrates application of legal principles to facts
- ▲ An example of a “dual role” case (family member/Registered Nurse): dual role cases are often very controversial as shown by the wide-spread critical media coverage of the case

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Strom v Saskatchewan Registered Nurses Association, 2020 SKCA 112

- ▲ Facts
 - Ms. S posted comments on Facebook relating to the end-of-life care her grandfather received at a care facility
 - She was on maternity leave at the time, but identified herself as a registered nurse in the Facebook discussion
 - She criticized the competence and professionalism of staff – including registered nurses – who worked at the facility
 - She also tweeted a link to her Facebook discussion to the provincial Minister of Health and the Leader of the Opposition

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Strom v Saskatchewan Registered Nurses Association, 2020 SKCA 112

- ▲ Discipline Committee found:
 - Ms. S's off-duty conduct was subject to discipline
 - Ms. S engaged in professional misconduct
 - Penalties: \$1,000 fine and \$25,000 in costs
- ▲ Court of Queen's Bench upheld the findings as reasonable:
 - In balancing expression and statutory objective of governing registered nurses in best interest of the public and the profession, Discipline Committee found Ms. S could and should have raised her concerns with individual care givers, the care facility, the health board, the minister, etc., before taking the matter public

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Strom v Saskatchewan Registered Nurses Association, 2020 SKCA 112

- ▲ Court of Appeal
 - Overturned finding of professional misconduct
 - As discussed, to find professional misconduct, consider:
 - Is there damage to the ability of the professional to carry out their duties?
 - Does it negatively impact interests of public?
 - Does it tend to harm the profession?
 - Answer must be found through analysis of entire context - Discipline Committee failed to do this

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Strom v Saskatchewan Registered Nurses Association, 2020 SKCA 112

- ▲ Court of Appeal
 - Discipline Committee failed to consider full context of Ms. S's actions when addressing whether the Association advanced its statutory objectives in a manner proportionate to impact on Ms. S's freedom of expression
 - Insufficient consideration to issues like personal autonomy and benefits of public discourse
 - Assessment of whether public expression by regulated professional warrants discipline must consider "full panoply of contextual factors" in each case

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Strom v Saskatchewan Registered Nurses Association, 2020 SKCA 112

- ▲ In setting aside the misconduct finding, the Court was careful to not extend its reasoning too far
- ▲ Reasons suggest that so long as a contextualized approach is taken by regulators in scrutinizing social media posts by practitioners, findings of professional misconduct would likely be upheld

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Five Common Complaints Arising from Use of Social Media

- ▲ Engaging in racist, sexist, distasteful or defamatory online communications
- ▲ Engaging in criticism of colleagues, employer, regulatory body, or others
- ▲ Breaching patient confidentiality
- ▲ Boundary violations
- ▲ Advertising violations

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Engaging in racist, sexist, distasteful or defamatory online communications

- ▲ People often use social media platforms as their online diaries or a place to broadcast their personal grievances
- ▲ Easier to say things when behind a keyboard and not face to face
 - Feeling that it is not real – drop inhibitions and become someone else
 - Delayed response – do not have to deal with immediate consequences

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Engaging in racist, sexist, distasteful or defamatory online communications

- ▲ Tip: Use the same level of professionalism in online interactions as in face-to-face
- ▲ Tip: Think carefully about publishing something on social media if would not be comfortable having patients/colleagues/employers see it
- ▲ Take care not to post images or comments that might be endorsing activities or behaviour
 - Remember the content posted may be discoverable
 - Trap: Never assume that you will be able to delete something that you have posted online

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Engaging in racist, sexist, distasteful or defamatory online communications

- ▲ Recall that issue for off-duty conduct is whether the conduct would have a sufficiently negative impact on the ability of the professional to carry out their professional duties or on the profession to constitute unprofessional conduct
- ▲ Tip: Avoid referring to status as a PT or member of Physiotherapy Alberta in social media communications
 - This will not completely eliminate the risk of being found guilty of unprofessional conduct but it does lower risk

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Engaging in racist, sexist, distasteful or defamatory online communications

- ▲ Tip: Think carefully about whether becoming a member or fan of a group might be considered racist, sexist, or otherwise defamatory
- ▲ Consider whether “liking” or “following” groups that contain potentially controversial topics or images could reflect poorly on you and the profession

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Engaging in racist, sexist, distasteful or defamatory online communications

- ▲ Tip: Be courteous when communicating with colleagues over social media, particularly when in public view. When sharing social media posts with colleagues or 'tagging' them to draw their attention to it, be mindful that they may not wish to be associated with it in a public forum
- ▲ Tip: Be aware of your regulator's and employer's social media policies

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Engaging in racist, sexist, distasteful or defamatory online communications: Scenario

- ▲ A PT "connects" with individuals on LinkedIn and then strikes up a conversation with them. The PT identifies themselves as a PT in Alberta. The messages sent by the PT quickly turn sexual, including sending naked pictures of the PT without a request, and encouraging the recipients to send naked pictures of themselves.
 - Has the PT engaged in unprofessional conduct?
 - What if they did not identify themselves as an PT?

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Engaging in criticism of colleagues, employer, regulatory body, or others

- ▲ Related to previous discussion – often use social media as a place to broadcast grievances
 - Due to it being easier to say things
 - Also because it has a far reach and can make quick statement
 - Additional issue of getting support – friends likely to "like" or comment in reinforcing way on criticism
- ▲ Many of the same tips and traps under previous category of complaint apply here

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Engaging in criticism of colleagues, employer, regulatory body, or others

- ▲ Trap: Easy to make impulsive Facebook post or Instagram story
 - Social media posts can easily reach the eyes of colleague, employer, regulatory body or others
- ▲ Tip: Engage proper channels for criticism
- ▲ Trap: Easy to use social media to "rant"
 - Tip: Ensure any criticism, if posted, is accurate and not exaggerated
 - Tip: Constructive criticism more appropriate than defamatory or insulting comment

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Engaging in criticism of colleagues or your regulatory body: Scenario

- ▲ A PT is the parent of a special needs child and is a member of a Facebook group for parents of special needs children. A recent post in the group is critical of funding decisions made by the government and the impact the decisions will have on special needs children. The PT responds to the message, identifies herself as an PT, and is critical of the government decisions.
 - Has the PT engaged in unprofessional conduct?
 - What if instead of responding, the PT just "liked" the post?

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Breaching Patient Confidentiality

- ▲ Professionals have a responsibility to ensure that use of social media is consistent with ethical and legal obligations to protect patient confidentiality
- ▲ Trap: Breaches of patient confidentiality online can have far wider implications because of the reach of social media and permanency of digital information

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Breaching Patient Confidentiality

- ▲ Respecting the privacy and confidentiality of a patient remains paramount in an online setting
- ▲ Tip: Do not use social media to discuss patients or post pictures of procedures, case studies, patients, or sensitive material which may enable patients to be identified without consent

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Breaching Patient Confidentiality

- ▲ Tips:
 - If value in posting and are going to proceed, obtain written and specific patient consent before posting and protect patient information by deidentifying the information and/or image posted
 - Remember it may still be possible to identify a patient, staff member, or employer from the information posted

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Breaching Patient Confidentiality: Scenario

- ▲ On four occasions over a period of several months, a PT posts photographs and information about her clients on her personal Instagram and Facebook accounts without discussing this with the patient. She never posts faces or names but the clients can be identified by staff, other clients and families. A client complains.
 - Has this PT acted inappropriately?
 - If so, how could she have avoided this?

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Boundary Violations

- ▲ Using social media can foster collegial relationships and enable professionals to connect with co-workers and clients
- ▲ The lines between public and private, personal and professional, can be easily blurred in social media

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Boundary Violations

- ▲ Have a duty to patients and the community to maintain professional boundaries
- ▲ A power imbalance exists between health care professionals and patients, and the maintenance of clear professional boundaries is important to the integrity of the professional-patient relationship and protects patients from exploitation

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Boundary Violations

- ▲ Trap: Friending or following a patient, former patient or close relatives of a patient on social media can make it difficult to maintain clear professional and personal boundaries as patients can connect on a personal, rather than professional, level and may be misinterpreted by patients
- ▲ May be some unique situations - professionals need to think carefully about the best possible way to maintain professional boundaries online

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Boundary Violations

- ▲ Tip: Create an online profile that is maintained as a professional page only or join a professional social networking site.
 - Patients can become friends or fans of professional page, which only provides information relevant to the professional practice
 - Respond to friend requests from a patient by directing them to a professional social networking page

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Boundary Violations: Scenario

- ▲ A PT has several conversations with a client. The client shares several details about their personal life, and the PT shares some personal information in return. The following week, on a day off, the PT logs into a personal Instagram account and searches for the client's profile, finds that its private, and sends a follow request. The client reports the incident stating that the PT attempted to have a personal relationship.
 - Did the PT act inappropriately? If so, what could they have done differently?
 - Is the situation different if the PT "liked" a publically available Instagram photo posted by the client?

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Advertising Violations

- ▲ Whether using traditional or social media, professionals remain responsible for advertising
 - Standards of Practice and Code of Ethical Conduct still apply
- ▲ Tip: Be cautious about posting comments or images about skills and services online as they may inadvertently contravene advertising guidelines

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Advertising Violations

- ▲ A client may be eager to add a testimonial to a Facebook page or participate in an Instagram post/story
 - Trap: The client is at risk of disclosing their confidential information
- ▲ Tip: Consider whether website and other social media platform settings allow users to leave comments
- ▲ Tip: Obtain informed consent regarding client participation in social media. Should discuss the parameters of the consent with the client and document the discussion in the client record

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Advertising Violations: Scenario

- ▲ A PT creates a series of weekly Instagram posts to demonstrate the services that she provides. The post includes the ability for followers to ask the PT questions, which she then answers, and also indicates that if the post gets a certain number of likes, one of the people who likes the post will get a free treatment.
 - Are there any concerns with the PT's actions?
 - If so, can the concerns be managed?

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Questions?

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THANK YOU



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