

# CYBERBULLYING & THE DENTAL OFFICE

July 2020



## **CONTENTS**

### **PART ONE:**

#### **FAQ: CYBERBULLYING & LEGAL CONSIDERATIONS**

*Prepared by*

Cox & Palmer for the Nova Scotia Dental Association

*Cox & Palmer publications are intended to provide information of a general nature only and not legal advice. The information presented is current to the publication date and may be subject to change following the publication date.*

### **PART TWO:**

#### **SAFEGUARD YOUR DENTAL PRACTICE FROM CYBERBULLYING AND BAD REVIEWS**

*Prepared by*

Susan Robichaud for the Nova Scotia Dental Association

## **PART ONE:**

### **FAQ: CYBERBULLYING & LEGAL CONSIDERATIONS**

*Prepared by*  
Cox & Palmer for the Nova Scotia Dental Association

This FAQ is designed to address common questions regarding cyberbullying, potential legal options, and general best practices when trying to limit the impact of these activities.

#### **What is “cyberbullying”?**

Cyberbullying involves harming an individual using the Internet by threatening, harassing, embarrassing, or socially excluding them. Anonymity and the opportunity for information to be widely shared raises the risks and damage that could result from cyberbullying compared to its offline counterpart.

Cyberbullying can take place using a variety of online tools and social media including email, text messages, instant messaging, social networks, rating sites, and blogs.

Dental practices are not immune to the effects of cyberbullying. For example, negative reviews can have a serious impact on the ability of a practice to attract new patients and employees.

#### **What legal options are available to remove cyberbullying posts?**

In Nova Scotia, two potential ways to have cyberbullying posts taken down are:

- The province's *Intimate Images and Cyber-protection Act*; and
- The law of defamation.

First, the *Intimate Images and Cyber-protection Act* (the "**Act**") provides a regime for victims of cyberbullying to apply to the court to have posts taken down and to limit a poster's online activity. Cyberbullying is defined under the Act as an electronic communication that causes harm to another person's health or well-being and was intended to do so.

As a result, this definition may restrict the application of the Act to comments that are personal in nature. Unfortunately, there have not been many court decisions addressing the Act since it became law in 2017. Nevertheless, under the Act a court can make an order requiring the person who made the post to take it down.

Second, the common law of defamation may provide a broader set of tools for victims of cyberbullying. Defamation covers statements that would objectively lower the reputation of the complainant or that might expose the complainant to hatred, contempt, or ridicule. As the law of defamation covers reputational damage, statements that might be directed against the business itself could also act as a basis for a claim.

For defamatory statements that appear in writing (also known as libel), some forms of damage are presumed and do not need to be proven. For defamatory statements that are made orally (also known as slander), damages must be proven except in limited circumstances.

Therefore, for defamatory online postings it is not necessary for a complainant to actually prove a business loss, such as lost clients, in order to advance a claim.

In extreme circumstances a court also has the ability to issue an injunction in a defamation claim, which would require the person who made the post to take it down.

### **What can be done to prevent a person from continuing their cyberbullying?**

As discussed above, both the Act and the law of defamation give the court powers to prevent a person from making additional and future comments.

### **Can I seek compensation from the cyberbully?**

Under both the Act and the law of defamation, a court can order the person making the comments to pay damages to the victim. The amount of these damages will vary, and depend on the context of the cyberbullying and the nature of the harm suffered by the victim.

### **What if the posts are made anonymously?**

A lawsuit can be filed against an anonymous defendant or one hiding behind a pseudonym. An application can then be made to the operator of the website where the comments were made, which could require them to secure and preserve identifying information. The success of such an application may depend on the nature of the comments, and whether they relate to a matter of public interest or more to a private dispute. Such an application may also require a court order.

### **What about freedom of expression?**

A party accused of cyberbullying has a number of defences that protect one's fundamental right to free expression.

For example, a claim of defamation may have to deal with the defence of:

1. **Truth:** If the statement is true, it is not defamatory. The defendant must prove that the words were true in substance and fact. In Canada, an allegedly defamatory statement is presumed to be false; the burden then lies on the defendant to prove it is true.
2. **Fair Comment:** If the statement was a comment on a matter of public debate, a defendant may be able to defend against defamation. The fair comment defence requires that the comments are:
  - a. on a matter of public interest;
  - b. based on fact;
  - c. recognizable as comment, but can include inferences of fact; and
  - d. opinions that a person could honestly express based on the proven facts, though the defendant does not need to honestly believe it.
3. **Responsible communication on matters of public interest/qualified privilege:** This defence applies where the statement is on a matter of public interest and the publisher was diligent in verifying the allegation, considered the seriousness of the allegation, the public importance of the matter, the urgency of the matter, the status and reliability of the source, whether the plaintiff's side of the story was sought and was accurately reported, whether the inclusion of the defamatory statement was justifiable, or where the public interest lay in the fact that the statement was made rather than the truth of the statement.
4. **Consent:** If the plaintiff has consented to the defamatory comments, the defendant may find relief from liability. Consent does not need to be express nor does it need to extend to the specific

comments that were made. The defence may be successful if the plaintiff authorizes, procures, or invites the publication of the remarks and they have some reason to believe the comments might include negative or ill-founded information.

5. **Innocent Dissemination:** This defence protects subordinate distributors from liability and often protects news agents, booksellers, libraries, ISPs, and search engines. It requires that the subordinate distributor have no actual knowledge of an alleged libel, they were not aware of circumstances to suspect a libel, and they were not negligent in failing to find out about the libel.

For a cyberbullying claim under the Act, the defences are similar to the defences against defamation as noted above. However, the fact that the statement is true is not a defence.

### **How can I protect myself from cyberbullying by patients?**

Having a social media policy is one effective way to protect your online reputation.

When creating a social media policy, the policy should not extend to encouraging patients to leave comments and reviews online. If a dispute or claim ever comes before the courts, such a policy may allow the defendant to rely on the defence of "consent" as described above. When inviting such comments, you must always be aware that someone might have had a negative experience and may post a negative review.

### **How can I protect myself against cyberbullying by current or former employees?**

While difficult to enforce, members may consider inserting a "non-disparagement" clause into employment agreements. These clauses would require employees not to make disparaging remarks about the business, owners, or any other employees. However, such clauses must not be overly broad or restrict an employee's rights.

In addition, if any employee is fired or laid off, it would be wise to have them sign a release that also includes a non-disparagement clause. It should be noted, however, that it is necessary to offer some sort of severance to the former employee for such a release to be enforceable.

Social media policies, employment contracts, and releases need to be carefully drafted to ensure their enforceability. Please seek the advice of an employment lawyer to assist in properly drafting these agreements.

## **PART TWO: SAFEGUARD YOUR DENTAL PRACTICE FROM CYBERBULLYING AND BAD REVIEWS**

*Prepared by*  
Susan Robichaud for the Nova Scotia Dental Association

Wouldn't it be awesome if we could start this article by ensuring or even suggesting that there is a possibility your practice could never get a negative online review or a similar type post on social media?

Truth is, the world is online and whether or not you have a practice website and a review system in place, it is safe to say that people are talking about your practice. To put this into perspective even more, one out of four patients will choose their healthcare services based on online reviews. Sure, they may solicit opinions from their friends, families and colleagues first, but I can just about guarantee that they will conduct an online search before making that first call.

How do I know this?

Think about it, when you are looking for a new service or product, what's the first thing you are going to do? You are going to look at the reviews and see what other people are saying about it... Right?!? That's what I do, and your prospective patients aren't any different.

Let's take a breath and dive a little deeper into a negative post, comment or review and the impact that can have on your practice. The way I see it, if someone posts a bad review, chances are this person just wants to be heard. They are obviously unhappy and the situation at hand may not all be about your practice either, however, your practice is the one that gets hit with a one- or two-star rating with a full-on vent session visible to anyone.

Ouch! That Can Hurt!

An unhappy patient or staff member will usually want to tell as many people who will listen about their experience or situation. Digitally speaking, this can seem detrimental, even fatal for your practice since just one negative review, comment or post can be seen by thousands of people. Take note, on the flip side, the same is true for positive comments, posts and reviews. The solution is to proactively work at consistently getting a healthy mixture of positive reviews. The more positive reviews you have the more they will overshadow the few negative ones that come through.

While most practitioners would prefer to avoid dealing with reviews all together, putting processes, procedures and systems in place can help to remove the stigma that negative reviews can cause lasting damage to your practice. With that said, it is essential for your practice to accept and adopt this new normal way of doing business. It's not as difficult as it may seem, and the following four steps will help you get started.

### **THE FOUR STEP PROCESS TO HANDLE NEGATIVE REVIEWS**

Knowing that no matter how hard we try, we simply cannot please everyone, that's a fact. Nearly everyone who works with the public will at some point in time have experienced a complaint or bad review. That said there is a way to handle these negative reviews, and ignoring them or lashing out at them is not it. That, will do more harm than good, and here's what you can do instead:

**1. Don't take it personally** – This is easier said than done. We are all human and it is natural to feel insulted, attacked and even humiliated, but try not to let these types of comments get the best of you. Think about all the healthy relationships you have within your patient population. Do a quick comparison in your mind and this will help alleviate some of this initial feeling.

**2. Take some time** – Take at least 24 hours to get past your initial reaction and gain a larger perspective. Re-read the review with a fresh mind and see if there is an essential message behind it. Does the patient or staff member feel unheard or mistreated in any way? Is this a genuine situation that must be addressed?

**3. Take the high road** – Once you have reached the 24 hours or 48 (no more), it's time to respond. Using an apologetic tone, turn the negative into a positive. This will show the reviewer as well as others who will no doubt see it, that your practice sincerely cares about the patient/staff experience. It will demonstrate that your practice sets high standards for service/treatment delivery. Here is an example of what that might look like:

**Possible Bad Review from (S. Jones)**

2-star review

“The office was an uninviting, sterile environment. The treatment recommended was by far too expensive which tells me they are doing unnecessary work. I won't be going back.”

**Possible Response (Your Practice)**

“We are very sorry that the service you received did not meet your expectations. It is our policy to do all that we can to make the patient experience and the environment as pleasant as possible. We pride ourselves on treating our patients like family and that means always doing what's right and explaining procedures and treatments with clear, easy-to-understand diagrams and explanations.

If this is not the way you were treated in our office, again we apologize. As for the office being an uninviting and sterile environment, we will certainly have a look and see what we can do about that. If you wish to discuss this further, please contact our office at (123) 456-7789, we are always happy to help where we can.”

**4. Take the conversation offline** – Re-read the example above and see how it says “please contact our office at (123) 456-7789, we are always happy to help where we can”. It's best to empathize and invite the reviewer to have a telephone conversation or make an appointment. Chances are they won't, but I hope you can see the positive effect taking the high road can have on your practice.

One question I often get is should I ask the patient or staff member to delete the review, and the answer to that is no. Viewing negative reviews as an opportunity instead of a threat is a complete game changer. It gives you a chance to step up and show what your practice is really about. Then, if you put a system in place to regularly get positive reviews, always making sure to comment on all reviews, good and bad, that again will work in your favour as a practice owner. On top of this, reputation following this strategy will work wonders for your online.

**About the Author:**

Susan Robichaud is a marketer, speaker and mentor. She is the founder of The “Remarkably Human” Practice Revolution. She and her team help dentists and other healthcare, wellness and holistic practitioners to create stellar experiences through person-centered marketing online and off.

[www.axionmarketing.com](http://www.axionmarketing.com)

[susan@axionmarketing.com](mailto:susan@axionmarketing.com)

(506) 852-6567