



**Regulation Matters:
a CLEAR conversation**

Episode 53: Regulating Licensees' Use of Social Media

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Line Dempsey: Welcome back to our podcast, Regulation Matters: a CLEAR conversation. Once again, I'm your host, Line Dempsey. I'm currently the chief compliance officer with Riccobene Associates Family Dentistry here in North Carolina, and I'm also CLEAR's president-elect.

As many of you are aware, the Council on Licensure, Enforcement and Regulation, or CLEAR, is an association of individuals, agencies, and organizations that comprise the international community of professional and occupational regulation. This podcast is a chance for you to hear about important topics in our regulatory community.

Before we get started on that, I did briefly want to say that we were able to have our first in-person meeting in the last three years, so we did open up some meetings in Raleigh for investigative training, and I had the great privilege of going and speaking to those individuals to start that and welcome them back. This is exciting; this is the first step, I think, that CLEAR needs to make in getting back into our face-to-face meetings.

Now today we're going to be talking about social media policies and regulating licensees' use of social media. This is a very big buzz topic that always comes up. Our guests today have all worked on developing social media policies. Joining us today we have Andrew Charnock. He is the chief executive and registrar with the Occupational Therapy Board of New Zealand. Nancy Spector, director of regulatory innovation with National Council on State Boards of Nursing, and Lise Betteridge, registrar and CEO of the Ontario College of Social Workers and Social Service Workers. So, we're glad to have all three of you with us here today; so welcome.

Andrew Charnock: Thank you.

Nancy Spector: Thank you; it's great to be here.

Lise Betteridge: Mmm hmm.

Line: Well, we're certainly glad to speak to you, and let me first also thank our listeners for joining us

today. So we're talking about regulating licensees' or registrants' use of social media. As I mentioned earlier, this comes up often as a topic of interest in our stakeholder surveys. We have asked members on CLEAR Communities what questions they'd like addressed in today's podcast. And I'll be honest, we got some really great questions back—so many, in fact, that we decided to extend this discussion into a follow-up webinar to really dive deeper into some of the more philosophical aspects of the topic. So stay tuned for more information on that.

But today on today's podcast we'll focus on some of the more foundational questions. So to start us off, can you all provide some perspective on the question, why develop a social media policy? And I'm going to shoot it off to you, Andrew, first.

Andrew: Thank you, Line. I think it's basically a sign of the times and the need to adjust to contemporary practice and social norms that are happening across society. I think it's helpful to provide advice and guidance to practitioners on what the expected standards would be around the use of social media and the connectivity that a policy on social media has with other pieces of guidance that's produced by a regulator, such as codes of ethics, codes of conduct. It's also important that the public have information about what is expected from practitioners. And, lastly, I think it provides a matrix or a measure by which complaints, once received, can be measured. So that's probably the main thrust of why we have developed a social media policy.

Nancy: Well, in nursing, you know, all of those things definitely apply. I think, though, the biggest thing for us is protecting the public, because of violating privacy and confidentiality. A lot of times the employees' policies look at using social media only in the workforce. And so the regulator policies look at it outside of the workplace, and we really needed a policy to explain to nurses the differences between confidentiality and privacy. You know, they're very related concepts, but they are distinct. So, confidentiality really is protecting the patient's information, like their lab values, and that doesn't get put on social media. Whereas privacy is a little more broad, of that patient's right to dignity and respect. For example, making fun of patients on social media—there was an incident where nurses actually posted on Facebook gunshot wounds to the face of the patient, those kinds of things. And then, of course, in the United States, we have the HIPPA, which is an Act again that protects patient privacy, and hospitals or other facilities can be in violation of that.

So, there's a variety of reasons, but I think in nursing probably those are the two biggest—protecting privacy and confidentiality.

Lise: And I think what I would add to what Andrew and Nancy have already said so well is, you could almost restate the question and say, "how could you not develop a social media policy?" Because social media has impacted us all; it's changed the landscape for all of us, both in our professional and our personal lives. And this is a great example of how, in order to be relevant and responsive as regulators, we need to provide some guidance to members or registrants or licensees in relation to this incredibly important force in our society.

And we've taken the approach—we don't actually call our social media policies, policies. But that is what they are. They're really guidance for members in using their professional judgment to interpret how the standards of practice apply to these very particular and often very challenging scenarios, because sometimes I think we found that members have difficulty making that link between the two things. And you're not going to be updating your standards of practice constantly in order to be responsive to whatever new social media platform is available or new behavior. Because I'm sure all of us have been in that situation where we've said, "Wow, I never would have thought of that." So, nothing but social media really does that quite so well.

And I really just wanted to highlight, I think there are two levels of social media policies that we refer to at our College or regulator, and that is, first of all our guidance to members in interpreting the standards. That's additional to our interpreting the standards of practice and the code of ethics. But then we also have the social media policies that members themselves may develop. So that's sort of the sub content, so we encourage all of our members in their practice to look at the advantage of having a social media policy, so they can be clear, transparent and part of informed consent, ensure that the public that they serve is aware of what their practices will be, and I think that's a really important element.

But I also wanted to just briefly come back to the whole idea of the public and that it's so important for the public to know what the expectations are of our members or registrants or licensees.

Line: That makes really good sense, Lise; I like that. You know, I remember being a part of a social media presentation we did for CLEAR in New Orleans many years ago, and you know, one of the topics (and I'm sure we will touch on freedom of speech issues this afternoon as well), but sometimes even by not putting too many restrictions on and letting people do what they do on social media may be helpful to the patient in determining—if we're looking at a patient from a healthcare side—who they want to see and who they don't want to see.

So, it is an interesting area. So, maybe going back to you, what would you say the key elements of a social media policy for licensees would be? And also, I like the word guidelines; I thought that was also a brilliant term as well. But what would you say some of the key elements are?

Lise: I think there is lots that a social media policy should address in terms of helpful guidance. I think it should be really clear in our case that it's still the standards of practice that ultimately guide members' practice and that would be used if there were ever concerns about the conduct of members in the form of a complaint or a matter going to discipline.

But I think, you know, beyond that piece of information, I think boundaries, that discussion about the difference between professional and personal. Because I think, as we may get into this, it's not a given that just because you've posted something on your personal social media, that's fine and you can do whatever personally.

And I think it's really important to highlight that all of our members and regulated professionals generally are in a position of huge power, authority, and influence. Therefore this does impact their use of social media. And it's quite possible that some have not necessarily considered that because they see it as kind of separate, and so they really need to consider this issue of professional integrity. There's the issue of the risks and the benefits. Nancy you've already spoken about confidentiality and privacy. Privacy—I'd say that's incredibly important.

One thing we've emphasized is competence. You know, some of the complaints that we've received or errors sometimes relate to a lack of understanding of privacy settings, for example. So just the basics, and if you're going to be a professional practicing now, you need to be competent. And you know I would say, those are probably the main areas. I'm sure Nancy and Andrew have more to add.

Andrew: I think, from our perspective when I saw the sort of podcast around social media and certainly our guidelines going beyond the concept of social media, such as Facebook, Twitter and LinkedIn, but it's all forms of electronic communication that causes practitioners to stumble and make errors in what they're saying, whatever platform they use. So I think that's a conversation for another time, I'm sure, to extend from social media and social platforms to other forms of electronic communication. And our guidelines do mention things like Facebook, LinkedIn, but also texting and emails are pretty relevant today on people's ability to communicate, and communicate with speed too. And when you have speed, you get errors and people's reaction almost immediately have access to a range of platforms where they can express their views without, you know, putting the filter on and being aware of other issues like confidentiality, dignity that others have mentioned.

But there's also the connection, you know what should be in a social media policy, for me and our organization, it's staying live to what's happening. So these social media guidelines really need to be organic and move, as you know. Applications move and people find different ways of actually expressing their views on different platforms and it's also a need to keep a check on the connection to other legislation and other organizations who have jurisdiction in this area, such as a privacy commissioner and other structures within our legislative framework that actually do come into play. And social media guidelines need to make practitioners and the public aware that these other organizations do exist.

And you know that the facility within employers now; I guess many employers have a whistle blowing policy and so there's an opportunity when people are exercised by what is going wrong, and the need to shout about it, there is an opportunity to take a route that the good employer should have around sort of whistleblowing policies so that it doesn't [end up that] the person feels that the only way they can get their voice heard or things that are wrong corrected is through a social media platform.

Nancy: And my colleagues did a great job and talking about the principles and the guidelines themselves, and certainly the same thing at NCSBN that we take into consideration that you do. So I'm going to take a little bit of a different stance and what should be in these guidelines in terms of introducing them and what our licensees need to know. For example, they need to know the reason

why, just like we were asked at the beginning, why do you need these. And we knew we needed to emphasize that we didn't want to bar them from social media; it's really very important to their practice. And then we felt we needed to have some definitions— what is confidentiality, privacy, what is HIPPA, what does that mean, and what are the applicable laws as Andrew had referred to and Lise as well.

And then what about the consequences? What are the violations involved and what are some of the state and federal laws? And I remember my boss saying, “You've got to put in there someplace that there could be jail time and it could be criminal as well as regulatory.”

And then, we thought it was really important as we're introducing these guidelines to give the common myths, for example, no information can actually be deleted from social media. People don't realize that, and it is discoverable by a court of law if it has been deleted.

And then we went with the guidelines that principles were great, that they talked about. And then we ended—and I think this was my favorite part—with six cases, and we tried to illuminate in those cases what was violated in terms of the social media guidelines.

Andrew: I think I'd echo that, Nancy. I think that's really important to have case examples, and that's what we've got in our guidelines. So it brings a thing into context and brings it alive for the reader when they were trying to understand some of the concepts which can be difficult to understand on occasion. Yeah, so good examples really drive the message home, I feel.

Lise: And I find that really interesting because our guidance, which we actually call practice notes, also includes scenarios. And I think that just goes to show that, when you're trying to make the link between the standards of practice versus these particular scenarios—you know I think I said at the beginning, people have trouble making that link—but a scenario really brings it to life. And it could highlight those really key issues, as you said, that are related to judgment, professional judgment, impulsivity of the communication. You know, nine times out of 10—competence, sometimes “oh I didn't know that if I sent all these texts to a client, they might be able to be seen later,” for example.

Line: I think that's brilliant the use of examples on that. One of the first things when I became the chief compliance officer here is, I put together a social media policy and used examples. Because coming from regulation when I first started with the North Carolina Dental Board, I remember a board member sitting down and speaking with me about how important and how much of a representative I was. I was the face, if you would, of the board, because I was the one that was going out into the public on a regular basis, but that didn't extend to just working hours—that while I was still a representative of the State, even when I wasn't working. They didn't give a lot of example in that, but I took that to heart and so that, when I became chief compliance officer here, that was one of the things I wanted to build some examples on.

So often, these violations, if you would, are not done in malice. Lot of times it's a lack of

understanding or knowledge that they released some type of information or take a picture of something that they think is OK to post on social media because that's what people do now. They take pictures of their food and drink and any other interaction they have—this is how they connect with other individuals. Their thought process is not looking at protecting patient privacy or what information could be presented. So I think when you think about these types of policies and guidelines, what can you consider concerning enforceability of these policies? And you know, I'm sure we've got a lot of different perspectives and different countries here, so the legal framework will certainly be different. But, you know, how do we enforce these things?

Nancy: Well, in the United States, we have encouraged our nursing boards to have regulations that they can use to enforce. And we found at the beginning, when we started looking at this in 2010 or so, that many of the boards didn't really see a way of enforcing them.

There are regulations, for example, for unprofessional conduct which have been used a lot, on ethical conduct, breach of confidentiality, revealing privileged information, etc, and so that's how we've encouraged our boards to enforce them.

Andrew: Yeah I'll follow on from Nancy's comments. In New Zealand, we've probably got in a unique position, particularly for health practitioners, we have one piece of legislation, the Health Practitioners Competence Assurance Act, which covers all the health professions in New Zealand. So that allows us to look at the legislation and to use and legislation when things go wrong. And so, when issues appear on social media that calls into question the conduct, competence, or sometimes the health of a practitioner, which can be sort of picked up from the postings that they make, there is a number of pathways within the legislation that we can take.

And many of the health regulators in New Zealand operate a right-touch approach to these things too, so it is a sort of approach that the response is proportionate to the issues that you're facing and so almost lends itself to a rehabilitative approach to some of the issues that we're seeing practitioners post on social media, so that learning takes place. And we've had people coming through a professional conduct committee having posted inappropriate things in response to some very emotive and emotional actions that have taken place and take place across the world—you know shootings, mass shootings which we had here in Christchurch—and people feel angry and want to make response to that, and a practitioner did just that. You have to consider the context in which these people are working, too, and what light that shines on the professional practice, but the sort of philosophy and approach to care. So any client seeing that remark may think, “Well, I'm not going to that service to receive help and advice,” so that the person did go through a professional conduct committee hearing and came out the other end. The professional conduct committee can set the requirements, recommendations, or determinations of what should happen. And what happened was a period of counseling for this person—so again, we have an insight, a true insight, into what the person had said on social media and ways of managing outbursts like that for the future. So that was a real rehabilitative approach.

There are other structures in place too in New Zealand, such as the Health and Disability Commissioner, which has a list of a code of patient rights. And so, you know, those can be breached and the Health and Disability Commissioner can find a breach in the code, not only for individuals, but also for organizations, and that covers all health and disability services regardless of whether they're regulated or not. And then, of course, like many other countries I guess, we have the Privacy Commissioner, when things do appear in public and people's privacy has been breached, and we've had episodes of that, too.

And you know as an organization, we have a Facebook page and our LinkedIn page; we have to be super careful of what we put on there, and how we use it. So social media applies to the regulators as much as it does to those people we regulate.

Lise: I really wanted to pick up on what you were saying about a rehabilitative approach, Andrew, as well, because I think it's sort of like to think about what we do in regulating our members is to move from the proactive to the reactive. And at the proactive end—that's where I would put the various practice resources to support the vast majority of members who practice ethically and professionally—you know, what do they need? And I think our practice guidelines, our standards of practice, and the practice notes that I referred to specifically on social media play a really important role in that so that they understand, so we identify concerns and issues at that end rather than waiting until they come through to a screening committee as either a report or a mandatory report or a complaint. But even at that stage, you know, there are options for education, for potentially supervision, for further supervision or education or learning, you know both formal and informal. And then after that, you know, that the most serious matters being referred to a discipline committee who ultimately decides.

I don't think there's an issue with the standards of practice being applicable, because we have standards of practice that address the broad themes that come up in social media so, confidentiality, record keeping.

I think one thing we didn't even discuss yet because there's so much to say, but some people are confused—they think that if they're communicating electronically, that's the clinical record or that's the record of the, in our case, social work or social service work service, which clearly it's not so. But competence and integrity—lots in there that apply to these social media kinds of situations. I very much support that I think we have a responsibility as regulators to try to put our efforts into the proactive end as much as possible. Of course, we have an important role at the reactive end as well.

Nancy: Right, and I'd like to follow up on something that Andrew said, too, and that's the right touch regulation. And I'm really excited about the webinar because we're going to have actual cases there. But there's been so many cases in the nursing regulatory bodies that I've been really proud of in terms of the actions that the regulatory bodies have taken. And in one instance they sent a letter of reprimand to the nurse, but they also contacted the medical board—because the physician had sent the order to her personal phone—and said, “You need to follow up on this.” And then they sent a

letter also to the Public Health Department, saying “You need to follow up with this agency, and they shouldn't be using personal phones for orders.” So I think those kinds of actions that regulatory bodies take really have to take into account everything that is involved, and not just what that one nurse did or other health professional.

Andrew: Yeah, just a thought about social media and what practitioners or those people licensees we regulate. It does provide a window into the world of how they see their practice and what concerns them about practice. So you know we talked about being reactive to things that come to us because of problems identified, or what people are saying on social media, but they also say probably good things as well, and I wonder how many of us actually do look at social media to take the temperature of the profession.

And you know use our own social media platforms, such as Facebook and LinkedIn, for people to be able to express what they're feeling in a medium they're very comfortable in doing so, you know that it's a two-way street, really. And maybe there's some missed opportunities around being more reactive and understanding the areas where licensees are working.

Lise: Andrew, I think that comment actually just made me think of the fact that because we operate in a title protection framework, it's very important that our college engage with employers of social workers and social service workers. So we have both a public awareness campaign and an employer awareness campaign, and they're very focused on our regulatory mandate, not obviously promoting the professions, but that's an area that are online advertising on social media, and so it does provide a little bit of that window that you're talking about, the kinds of comments. And not to mention just the regular—I mean, I'm sure you all remember when we all first started considering social media use as regulators and I remember someone making the joke to me once about that slide with all the social media platforms. Fortunately we don't put that up anymore, because we've long past that point, but it does make me laugh.

Nancy: I remember when we started as well, working on our guidelines and we thought, “Well, maybe these just happened at a couple of the boards of nursing and not at all around.” So, we did a survey and we were just amazed to find out, you know the majority had had major complaints and that's what got us down this journey.

Lise: mm hmm.

Line: Yeah, it certainly is one of those things, and I think that kind of spiked in my memory, sometimes it's not just responding to negative things; sometimes it can be positive things and all of a sudden, people are revealing more information that they shouldn't reveal because a patient or somebody posted something positive, and then you know we take that as an affirmation, and one of “well, thank you for your kind words; it was great seeing you as a patient as well.” And there's all of a sudden the violation because we've confirmed that they were seen there. So, it's interesting.

One thing that was brought up, and I think this was brought up on our CLEAR Communities, to kind of take this to another level, but if the regulated member doesn't actually use their title—doctor, whatever it is—doesn't show that they're a professional in their social media posts or their profile, do you still have a mandate to regulate? What if this is a small community where that person may be known as a regulated professional whether they put their title out there or not, how do you handle that?

Lise: Well, I might jump in to say, I think this is probably more true than not, and that you know our guidance would be there that our members need to be very careful about this, that there is a privilege that comes along with being a regulated professional and it's a position of power and influence, as I think I said at the beginning. And so there are certain things that the reality is that regulated professionals, in our view, might have to give up—so that might be sometimes the freedom to post whatever that might reflect negatively on the profession. So I think it's important that members know that it's not total freedom to post whatever just because it's a personal post.

Nancy: Right, and you know even me—I'm from Chicago—even in Chicago there are small communities around; it's very easy to figure out that the person posting is a licensed nurse or whatever profession. And so, generally, no, it isn't okay to post about patients, even if you don't talk about what your license is, because you just never know.

Andrew: I think my own profession in nursing, which you know I started in the 70s, there was very much a feeling that the professions were a calling, a vocation that you are called to do. And with that sort of philosophy and idea comes maybe some very Victorian standards and understanding about behavior and what is ethical. As I said I think in the very start, social media guidelines/policies or whatever and the need to respond are a sign of the times. You know, people are changing and the way they interact with each other and what they post on social media these days would never have been acceptable, you know, in the 70s when I was nursing.

Things have changed around what constitutes a profession and what constitutes a professional. Freedom of speech and the right to argue a point which you feel is affecting a number of people, and when somebody gives you a platform or a chair to stand on to shout about that, such as a social media platform, you will get people in this day and age taking that opportunity and raising their voice on that platform. But it comes back to the standing of the profession within the community and within the society that they work.

And there is a measure to take on that, I think—that if I say this on my Facebook page, what will people think of me, and what will people think of the standing and reputation of the profession. That Victorian attitude and the philosophy of some professions being a calling—it is changing.

And some people today seem that they've got a high degree of self-entitlement to say the things that they want to say and give them a platform to say onto. And you know, in New Zealand they're 5 million people; they're just over 3000 occupational therapists and people do know one another

through those sorts of you know that when you talk about those numbers really. Yeah so maybe the size, we actually curtails some of that activity. I don't know the larger organizations with the larger licensees can hide easier.

Lise: When you talk about changing times, Andrew, I think that really raises the complexity of the issue, because there are certain things that continue to hold true about being a regulated professional, and there are other things that may be shifting, and it's tricky to sort out which is which. And I think it's really important for there to be a pause on the part of our members to consider that really carefully. And sometimes by the time they've pause, maybe the impulse is gone; and maybe that's some of what our role is as a regulator is to say, "You know, you're a professional; you're required to use your professional judgment in every interaction, and that includes personal and professional, and so pause and think about it." There might not always be a super clear answer.

Andrew: [There needs to be] education to educate the undergraduate programs that produce professionals. That idea of what it means to be a professional needs to be unpacked for the undergraduate programs. What does ethical practice mean? There's that opportunity to look at it.

Nancy: This question, especially, was brought up during the pandemic in terms of people going out and spreading misinformation. And we had a lot of complaints about that throughout all of our boards of nursing, to the point that we had to put out a separate policy statement in terms of spreading misinformation. So it's a very important question, and I think all professionals have to be very careful about what they're posting, considering that it is recognized that they are licensed for the most part, no matter if you live on small New Zealand or 250 million or however many people we have—there's small communities.

Lise: Well that's similar I guess to what I initially started with talking about when I started on the board with the Dental Board, a good conversation about being a professional at all times, and this was obviously before Facebook. It'll be interesting to see what the next iteration of this is after we go through social media, because there'll be something else down the road that will show a window into the personal life of practitioners and professionals. So, it'll be interesting.

Another question that was posed on CLEAR Communities is, how do you monitor the social media of your registrants? Does your board actively monitor social media accounts, or do you just respond to complaints? Do you use technology to monitor? Is AI involved in here? And another member on Communities asked if this technology is able to access social media sites that that person has also made private? So I guess, as we uncover new issues to examine, are there ways to examine them that we don't know about?

Lise: Well, I might just jump in to say we don't use AI or monitor members' social media. We would respond to reports, for example, that might be something that comes to our attention through the media or through an employer or through another member of the College. But mainly we would be responding to complaints and reports that we receive.

Andrew: You know the same for us, Lise, that comes to our attention. We don't monitor. We have our own Facebook, of course, and we have settings on there that doesn't allow people just to post on there without our knowledge. So you know, we have that sort of function, and that exists on a number of platforms, as I understand it. But I did look to see whether there was any software available that would allow that sort of monitoring activity, and I couldn't find any that's available to monitor that. A bit 1984, but we're not doing that. Imagine doing that: [laughing] "We are watching you, by the way."

Lise: [Laughing] It would go over extremely well, wouldn't it?

Andrew: Yes, "we're very covert about it; so don't worry."

Nancy: Well, in the United States, it's the same thing. We have over 5 million nurses, and that would be a job in itself to monitor all of their social media. So we rely on complaints; our boards do get a lot of complaints. Our guidelines have really helped. We have tried to widely disseminate them as well. We've noticed that there are fewer complaints, I remember, once my boss said, "You'll know that they worked if you have no complaints." We will never have no complaints, but you know the boards of nursing don't have quite as many as they used to have.

But you know, when Andrew talks about changing times, the complaints have changed as well. And you know, a major complaint now is patients videotaping nurses and then they see other patients in that video. And that isn't really a HIPPA violation because that's not a healthcare professional doing it; so definitely the complaints change. But hopefully if you have really good guidelines and policies, they will decrease some—and a good education of nurses.

Lise: Anecdotally, I'll mention that I do know many boards and regulatory agencies, when they get a complaint that's not social media related, will actually at that point in time check social media things to see other things so. I don't know if you guys do that as well, but I do know that there are boards that are doing that just from my conversations over the years. We certainly do that when we're trying to hire somebody. You put in a job application and one of the first things I'm going to do is take a look at what you're posting on social media, because it gives us a little bit of an eye into the window that we don't see on the resume paper, right?

Well, here's a question related to licensees' freedom of speech. So I kind of alluded to this earlier. Someone posted this on CLEAR Communities: should social media policies cover reviews or testimonials, whether they're done via social media or review platform?

Andrew: Just some clarity around testimonials, because there are guidelines around advertising and what professions can do when they're advertising or seeking testimonials. And I know that some regulators in New Zealand have actually identified that people shouldn't be putting testimonials on their organizational sites or all of the Facebook pages.

This one—this freedom of speech—is not easy to respond to, and it really depends on the context. And until these issues are tested, usually through either our own systems or through the more formal jurisdictional system, it's hard to give an answer. Is it changing—the changing platforms are changing views on freedom of speech and the rights around that. And you know, like many countries, New Zealand has got laws related to the freedom of speech, through the Bill of Rights Act, and it does identify the right to freedom of expression, but a freedom subject to reasonable limits prescribed by the law. So you can't just say what you like and be damned; there are repercussions to that.

So it is tested against what is accepted in society, and society is changing; times are changing. What people talk about today on social media would not have been something we'd talked about 10 years ago, and the legal frameworks and the systems do take time to catch up with what is becoming social norms now.

Yeah, and the other piece of legislation we have that comes into play is Harmful Digital Communications Act. So that act is there for the purpose of deterring, prevent, and mitigate harm caused by individuals on putting digital communication out there. And that covers a whole myriad of things other than Facebook, LinkedIn, etc. And proceedings can take place under that piece of legislation. And New Zealand has an organization that is separate from government, and it's called Netsafe, which is an organization that receives complaints.

Yeah that's a hard position. I'm sorry that's not a cast-iron response, because I can't give one because of the changing landscape all the time. And that sounds like I'm flipping things and being a very good politician, but that's not the case. It is a difficult one to grapple with, and until we get some landmark decisions or some pegs in the sand, then you know we're going to struggle with coming and understanding this.

Nancy: Yeah, I think, Line, if you were to have a theme for this podcast, it would be the changing times. Absolutely as Andrew says, because I was just thinking about this question as well and it really shows that it needs to be reviewed—any of the guidelines—by attorneys in terms of that whole freedom of speech. I remember back in 2010 when we did our guidelines, we did not do that. They were not reviewed by our attorneys, but certainly we would today. So I agree with Andrew. It is kind of changing and it's a very hard question to answer. In terms of looking at testimonials etc., we saw some of this during the pandemic, and I would say, probably not—because you really need to stick with that patient protection, patient confidentiality, ethical.

And you know, depending on what the testimonial was, you just have to be very careful that you know you're treading very well and evidence-based etc. So yeah, it's a difficult question.

Lise: I would just add, I think in the sort of overarching complexity of this issue, Andrew and Nancy, you've both put it so well. There are so many considerations in the broad freedom of speech, so to get very nitty gritty about it in terms of testimonials—our standards of practice specifically address testimonials, but there's some complexity around what actually is a testimonial when you get into

social media and also the members' ability to control that. And I think the way we've handled it and the way both our standards of practice and our practice guidance is, you still have a responsibility to be aware of the information and to take reasonable steps to remove information that isn't in compliance with the standards.

But I would say that the whole challenge around testimonials isn't a new issue, even with the incredibly exponentially increased use of social media. Challenges around testimonials and why they might be problematic are not at all a new thing for us, and I would guess not for others. And really I think that does come down to the misinformation that puts the client in a very difficult position, potentially that even the professional may not be aware of. I think members have a responsibility to ensure that every decision they make comes down to the best interest of the client, not what's going to benefit their practice or their business or themselves personally. So again it's that judgment issue.

Andrew: I just like to add —another area that perhaps needs to be considered is the governing board. I think all three of us are speaking from an operational perspective, and the people that set a strategy or a belief system or mission or vision of an organization is the governing board. So it really does depend on who's gathered around the governing table around things like social media. If you've got people that are over 50 (and that's, you know, the average age of the governing board), their view and ideas about what should and shouldn't be on social media were very, very different to a 20-30 year old.

And then you know we take our measure, and we take our direction from the governing boards of various organizations, and so you know, that's something else I think that we need to be mindful of.

Lise: mm hmm.

Line: Great point! I'll just go ahead and say on the record: I'm glad that there's not a lot of video evidence of me growing up. [Laughter]

Well, I think this has been a great start to the conversation. There's a lot of things to consider and an ever-changing landscape around social media and balancing licensees' rights and their responsibilities. It's been great to have your perspective today on this podcast, so thank you Nancy, Lise, and Andrew for speaking with us today.

Andrew: Thank you.

Nancy: Thank you.

Lise: Thank you.

Line: Absolutely, and it has been our pleasure. I also want to thank our listeners for tuning in for this episode. As I mentioned earlier, there's still a lot to discuss on this topic, and our speakers will be

presenting a panel discussion via webinar soon where they'll have the opportunity to discuss the public's expectations versus licensees' expectations with using social media, the concept of freedom of speech and whether that applies to licensees especially when using social media as a platform for activism, and whether social media usage should be covered under a professionalism standard or a code of conduct. They'll also discuss some recent cases and their implications, so we hope you can join us for that webinar.

And we'll be back with another episode of Regulation Matters: a CLEAR conversation very soon. If you're new to the CLEAR podcast, please subscribe to us. You can find us on PodBean or any of your favorite podcast services. If you've enjoyed this podcast episode, please leave a rating or comment in the app. Those reviews help us to improve our ranking and make it easier for new listeners to find us.

Feel free to also visit us on our website, which is www.clearhq.org, for additional resources and a calendar of upcoming online programs and in-person events.

Finally, I'd like to thank our CLEAR staff, specifically Stephanie Thompson; she's our content coordinator and editor for this program. Once again, I'm Line Dempsey, and I hope to be speaking to you again very soon.

The audio version of this podcast episode is available at https://podcast.clearhq.org/e/social_media.