

Emailing Patients? BE CAREFUL!

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Over the last several years, the use of email as an "efficient" means of communication has become more prevalent and efficient. A recent survey by the American Medical Association ("AMA") has found that most patients "want the convenience of email." While the survey also found that less than one third of physicians use email to communicate with their patients, the number is increasing over the past few years. If you email to communicate to your patients, you need to consider the possibility of liability arising from a variety of factors, including a delayed response.

As with any other method of communication it is incumbent upon the physician to ensure the reliability and confidentiality of any email communication with a patient. In order to avoid misunderstandings or misuse of email by patients, you need to establish written guidelines for the use of email in your practice. These guidelines should address what kind of information you are comfortable communicating via email and what information should specifically not be communicated by email. Certainly, urgent medical matters or matters involving highly sensitive issues (for example: psychiatric, drug or alcohol abuse, etc.) should not be relegated to electronic communications, but prescription refills, scheduling appointments, non-emergent follow-up questions and perhaps certain test and lab results and even billing questions may be appropriate subject matters for email communication.

The AMA has established "Guidelines for Physician-Patient Electronic Communications." These guidelines include items such as the physician establishing a policy and procedure for checking emails and establishing a "turnaround time" for responding to a patient email and for designating an appropriate substitute person to review emails while the physician is unavailable or away. The policies regarding how a patient may use email with you and your practice should also be established and made available to patients. While there is a certain efficiency to email, a prolonged back and forth email exchange may in fact be less efficient than a direct in person or telephone conversation. You should use your discretion in determining at what point to advise a patient to either call on the telephone or make an appointment to meet in person.

In addition to ensuring the reliability and confidentiality of physician email correspondence, it should be noted that such correspondence between a physician and patient should become part of the patient's medical record since it memorializes the advice and information you provided to a patient and may be just as necessary for your defense in a potential medical malpractice litigation or some other type of investigation of conduct. Accordingly, emails should be printed and inserted into the patient's record, or if electronic medical records are utilized, appropriately stored as part of the patient's EMR. Finally, it is important for you to keep in mind that you should not make disparaging or critical comments in your emails as that may also increase your exposure to a lawsuit.

Certainly a written agreement between you and your patients which describes your policies in some detail can go a long way in

helping your patients understand the appropriate use and limitations of email and for your patients to have more realistic expectations of your response time. Using emails can be helpful in promoting additional, prompt dialogue between you and your patients. But it can also create significant problems if not used properly. Creating email guidelines for your practice and written agreements with your patients should afford you additional protection when stepping into this minefield.

Physicians are advised to discuss the formulation of written email guidelines to be provided to patients with their attorneys and business advisors.

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