

PHYSICIAN'S USE OF SOCIAL MEDIA AND EMAIL COMMUNICATION

Robert S. Iwrey, Esq. & Stephanie P. Ottenwess, Esq.
THE HEALTH LAW PARTNERS, P.C.

Medical practices, like all businesses, face competition from other offices in their area and thus often seek to differentiate themselves by portraying value and quality to their prospective patients. The use of social media outlets like Facebook and Twitter, or collaboration tools like blogs or wikis, have provided a place for patients to learn about a physician's practice and decide on the value and quality of the practice before they become a patient. As a result, healthcare providers are more frequently utilizing social media to market their practices and to dispense health information. In doing so, however, it is critical for any physician or practice to ensure that the use of social media outlets does not inappropriately invade the physician-patient relationship or erode a continued positive internet presence for healthcare providers.

With these goals in mind, the American Medical Association ("AMA") adopted recommendations for physician's use of social media (*See* AMA Policy: "Professionalism in the Use of Social Media" at www.ama-assn.org/ama/pub/meeting/professionalism-social-media_print.html). These guidelines recommend that physicians utilize privacy settings on social media websites and develop appropriate mechanisms to monitor their internet presence for accuracy and appropriateness. The AMA also suggests that healthcare providers maintain proper boundaries when interacting with patients on the internet and exercise good faith efforts to protect their clients' privacy and confidentiality. Finally, the AMA cautions physicians to be mindful of the potential negative implications arising from the use of social media on their reputations and professional careers.

E-mail communication between physicians and patients within a professional relationship, in which the physician has taken responsibility for the patient's care, is also on the rise. Although the use of e-mail communication within this professional relationship can certainly be useful and effective, caution must be exercised when used for urgent matters or when relaying confidential information to assure that the appropriate privacy and security measures are in place. Those patients with whom a provider communicates via e-mail must have an understanding of the need to call the provider's office directly if the matter is urgent (e.g., requiring a response on the same day) and have a clear understanding of the expected response time on non-urgent e-mails.

The American Medical Association has also issued guidelines governing the use of e-mail in regard to the physician-patient relationship (*See* AMA Advocacy Resource: "Guidelines for Patient-Physician Electronic Mail" at <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/young-physicians-section/advocacy-resources/guidelines-physician-patient-electronic-communications.page#>). Within these guidelines, the AMA urges against the use of e-mail communications as replacing "the crucial interpersonal contacts that are the very basis of the patient-physician relationship" and emphasizes that e-mail communication be used rather to enhance such contacts. Nonetheless, the AMA does recognize a number of benefits offered by e-mail communication including, without limitation: (1) allowing for follow-

up patient care and clarification of advice provided in a professional office setting; (2) creating a written record that removes doubt as to what information was conveyed; (3) providing the patient with a written summary of useful information such as addresses and telephone numbers of other facilities to which the patient is referred, test results with interpretations and advice, instructions on how to take medications or apply dressings, and pre-and postoperative instructions; and (4) educating patients via electronic templates or hypertext links to educational articles available on the web.

For physicians who choose to incorporate the use of e-mail communication with patients as part of their medical practice, the AMA has recommended that the following guidelines be adopted:

1. Establish turnaround time for messages. Exercise caution when using e-mail for urgent matters.
2. Inform patient about privacy issues.
3. Patients should know who besides addressee processes messages during addressee's usual business hours and during addressee's vacation or illness.
4. Whenever possible and appropriate, physicians should retain electronic and/or paper copies of e-mails communications with patients.
5. Establish types of transactions (prescription refill, appointment scheduling, etc.) and sensitivity of subject matter (HIV, mental health, etc.) permitted over e-mail.
6. Instruct patients to put the category of transaction in the subject line of the message for filtering: prescription, appointment, medical advice, billing question.
7. Request that patients put their name and patient identification number in the body of the message.
8. Configure automatic reply to acknowledge receipt of messages.
9. Send a new message to inform patient of completion of request.
10. Request that patients use autoreply feature to acknowledge reading clinicians message.
11. Develop archival and retrieval mechanisms.
12. Maintain a mailing list of patients, but do not send group mailings where recipients are visible to each other. Use blind copy feature in software.
13. Avoid anger, sarcasm, harsh criticism, and libelous references to third parties in messages.
14. Append a standard block of text to the end of e-mail messages to patients, which contains the physician's full name, contact information, and reminders about security and the importance of alternative forms of communication for emergencies.
15. Explain to patients that their messages should be concise.
16. When e-mail messages become too lengthy or the correspondence is prolonged, notify patients to come in to discuss or call them.

17. Remind patients when they do not adhere to the guidelines.
18. For patients who repeatedly do not adhere to the guidelines, it is acceptable to terminate the e-mail relationship.

In addition, the AMA has recommended that the physician develop a written informed consent agreement for the patient to sign regarding the use of e-mail communications as part of his/her care incorporating the enumerated guidelines above. The AMA guidelines also suggest that the physician's practice implement certain security measures such as: (a) using a password-protected screen saver for all desktop workstations in the office, hospital, and at home; (b) never forwarding patient-identifiable information to a third party without the patient's express permission; (c) never using the patient's e-mail address in a marketing scheme; and (d) never sharing professional e-mail accounts with family members (*See* "Guidelines for Patient-Physician Electronic Mail", *supra*, for additional medico-legal and administrative guidelines). Further best-practice guidelines are available from the American Medical Informatics Association via a white paper entitled: "Guidelines for the Clinical Use of Electronic Mail with Patients," JAMIA 1998; 5:104-111.