

Treat E-Mail With Care to Avoid Legal Liability

BY SHERRY BOSCHERT
San Francisco Bureau

SAN FRANCISCO — Give e-mail correspondence with patients the same care and attention you'd give to paper records, faxes, or phone calls in order to minimize medicolegal liability, Dr. Jeffrey L. Brown said.

Physicians should be reasonably certain that the person requesting information by e-mail is authorized to receive it, just as would be done with phone calls, he said at the annual meeting of the American Academy of Pediatrics.

At a minimum, your e-mail system should include an automated response to any e-mails received from patients, acknowledging that an e-mail message has been received and saying that you will respond within a set period of time, such as 24 or 48 hours, said Dr. Brown of Cornell University, New York, and in private practice in Rye Brook, N.Y. He has no association with companies that market e-mail systems or services.

The automated response should alert patients that confidentiality cannot always be ensured in e-mail correspondence, and that you cannot respond to urgent questions posed by e-mail. Patients should contact your office by phone for urgent matters.

The response also should inform patients that if they do not get a reply from you to any e-mail message within a reasonable period of time—"usually 48 hours," Dr. Brown said—the patient should call your office, because you may not have received the e-mail. If you are away from the office when patients e-mail, the automated response should let them know that, and give the date of your return.

In the other direction, e-mails sent by physicians must be compliant with the Health Insurance Portability and

Accountability Act (HIPAA). As with faxes, conventional e-mails must protect the confidentiality of sensitive information such as Social Security numbers, medical identification numbers, laboratory results, diagnoses, medications, and more.

To ensure confidentiality in e-mails, use an encrypted message system, Dr. Brown advised. Solo practitioners or small practices may want to do an Internet search for the term "encrypting e-mail systems" to find a list of encryption providers, he said. Typically, an outgoing e-mail would be sent to the provider, encrypted, and returned to the physician's system before going out to a patient.

Confidential e-mail from physicians should contain a warning disclaimer similar to those used on fax transmissions. A typical disclaimer says the following: "Important notice: This e-mail contains confidential and privileged information. It is intended only for the individual or entity to whom it is addressed. If you are not the intended recipient, or if you have received this transmission in error, you are hereby instructed to notify the sender and to erase its content and all attachments immediately. Copying, disseminating, or otherwise utilizing any of its content is unlawful and strictly prohibited."

However, "If you don't want to use this one, ask your attorney to fax you something," and use the disclaimer you find in the attorney's fax, Dr. Brown suggested.

Treat e-mail messages like other patient correspondence, and file them appropriately, he added. Before erasing e-mail, save the patient's original e-mail and your response as hard copies in the patient's chart or electronically if you use electronic charts. You should also take precautions to protect confidential information on laptop computers and hard drives from thieves, as you

E-Mail Etiquette for MDs

- ▶ Do not use your personal e-mail address to answer patient e-mails.
- ▶ Do not answer a new patient's e-mailed medical questions without first establishing a formal relationship. "You have no idea who they are and what their problems are," he warned.
- ▶ Do not forward a patient's e-mail correspondence or address to a third party without first getting the patient's consent.
- ▶ Do not use an indiscreet topic in the heading of your response. "Don't write, 'Your pregnancy test is positive' in the subject line," he said. Instead, use the same strategies you'd use when leaving a voice mail on a patient's answering machine. "Say, 'I have your lab work,' or something like that," he suggested.
- ▶ Do not leave e-mail messages on a computer screen where they can be read by others.

Source: Dr. Brown

would for other medical records. Be sure to use encryption software or change passwords frequently to prevent unauthorized access. And of course, it is crucial to erase all confidential information from hard drives before disposing of them.

"Even if you do all the right things, there is still a possibility that you will be subject to suits," Dr. Brown said. "In the end, the best defense against legal action is practicing good medicine." ■

Patient Portals Don't Mean an Increase in Physician Headaches

BY MICHELE G. SULLIVAN
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NEW ORLEANS — Rather than unlocking a Pandora's box of nattering e-mails, an electronic patient portal that allows messaging and even access to test results can improve patient satisfaction and decrease patient visits.

"Many physicians think that this type of access is frightening," Dr. Gretchen P. Purcell said at the annual clinical congress of the American College of Surgeons. "They think they'll be barraged with messages, that patients will misinterpret their test results, and that physicians could even be held legally liable if they don't respond in time to an urgent message."

But health care providers, who are about 10 years behind the curve in the digital world, need to face up to the facts of the 21st century, said Dr. Purcell of the surgery department at the Children's Hospital at Vanderbilt in Nashville, Tenn. "Patients are demanding the same kind of online access to their medical information as they have for all other aspects of their lives. Those health care institutions that do not have a patient portal now probably will within the next 5 years."

Patient portals can be designed to suit the needs of different practices and to fulfill various functions. At a minimum, they allow patients to pay bills, schedule or change appointments, and request prescription refills. Other portals are more robust and give patients the ability to review medical records, view test results, and

send messages to their health care provider, said Dr. Purcell, who is also with the biomedical informatics department at Vanderbilt Medical Center.

Among the most controversial topics are messaging and the ability to access test results, she said.

"Messaging is probably the function physicians fear the most. Many think it's the equivalent of getting and sending personal e-mail, and this brings up all kinds of worries about security and privacy."

E-mail and messaging, however, are not the same things. Messages don't go to a personal e-mail account; instead, they go to a dedicated inbox. "This message box is routinely checked by an administrative assistant or nurse—someone who can often answer many of the questions, and who would involve the physician only when necessary—similar to phone call triage."

There also are concerns that these electronic exchanges aren't part of a patient's documented record. "Some portals can make messaging part of the medical record, and some physicians have found ways to charge for this 'online consultation,'" Dr. Purcell said.

It's important to set clear expectations about response time and emergency issues. Most messaging systems tell patients that they may have to wait 2-3 business

days for a personal reply and advise them to call 911 for a medical emergency.

It's not unreasonable to assume that electronic communication could allow patients to bombard offices with questions and requests. Although data are still limited, the studies that are out there suggest just the opposite, Dr. Purcell said.

Two studies published in 2005 indicate that messaging increases patient satisfaction without any corresponding increase

in workload. The first study randomized 200 patients to secure messaging or usual care. Only 46% of the patients who were given access sent any messages at all; the average was just 1.5 messages per patient per year. And

although messaging didn't reduce the number of telephone calls the office received, the number of office visits in the intervention group did go down (Int. J. Med. Inform. 2005;74:705-10).

The second study randomized 606 patients to a patient communication portal or to a Web site with general health information. Only 31% of the patients given access used the portal. The message box received only one message per day per 250 patients. Again, there was no difference in the number of office telephone calls between the groups, but the patients in the portal group reported better satisfaction with communication and overall

Out of 341 patients surveyed, 162 were willing to pay for the convenience of a portal, with \$2 cited as the median payment they thought fair.

care, even if they never used the portal (J. Med. Internet Res. 2005;7:e48).

The same study indicated that secure messaging probably would not overwhelm anyone during working hours, Dr. Purcell said. "Patients tended to use the portal during nonclinic hours—the most convenient time for them—with about 73% of messaging occurring from 5 p.m. until midnight."

Patients may even be willing to pay for the added convenience of messaging, the authors concluded. Of 341 patients surveyed, 162 (48%) were willing to pay for online correspondence with their physician, with \$2 cited as the median payment they thought fair.

Patient access to test results is another area of clinician concern, she said. "Obtaining test results is probably the most commonly desired and most commonly used function of a patient portal, and one that makes physicians very nervous," Dr. Purcell said.

The MyHealthAtVanderbilt system (www.myhealthatvanderbilt.com) has three tiers of test results—two can be available to patients online.

"Some low-risk, high-value test results, such as cholesterol levels, are available immediately, and some results are available with a delay, such as tests that require interpretation in a specific clinical context," Dr. Purcell said. "But some results, such as cancer pathology and HIV tests, and others that require intensive patient counseling, are never available through the portal." ■