

Guidelines for E-mail Communication with Patients

Although face-to-face communication is the foundation of the physician-patient relationship, there are situations where face-to-face communications may not be necessary, and electronic mail (e-mail) communications may be more expedient.

E-mail, which is not meant to replace the office visit, can provide both physician and patient several significant benefits. For instance, it can save time for physician and staff by reducing nonurgent visits and eliminating "phone tag."

However, e-mail should be used only to support direct interaction. Also, it should be used with considerable caution because along with great promise, e-mail potentially poses unique liability pitfalls.

What follows are some of the benefits and risks associated with using e-mail in a medical practice.

The benefits

In addition to the aforementioned benefits, other advantages of using e-mail

to communicate with patients include the following:

- It's fast, convenient and may improve patient management.
- It may encourage patient participation in care and strengthen physician-patient relationships.
- It provides the patient with a written account of physician information and advice that can be saved and referenced, thereby increasing patient understanding and compliance.
- It allows the physician an opportunity to address patient issues in a calm and thoughtful setting as opposed to the, at times, hurried venue of an office visit.
- It allows the physician to conveniently attach reference documents and links to credible third-party information.
- It may improve patient and provider satisfaction.
- It automatically provides a written record of communication, unlike phone calls.

Fifty-four percent of patients would switch to a doctor who permits the use of e-mail

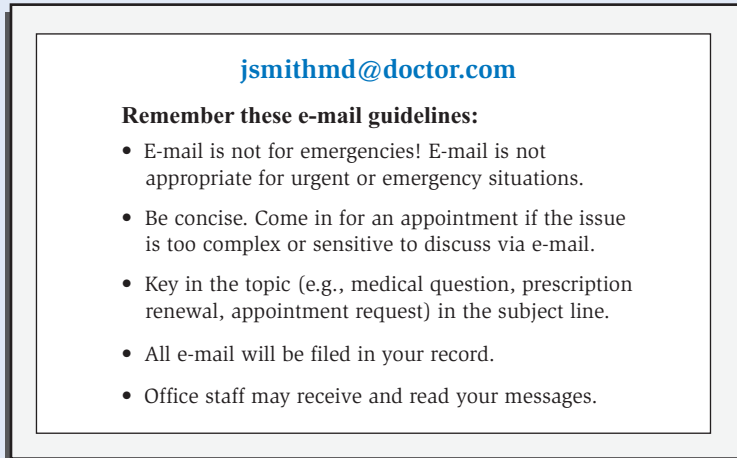
Using e-mail

Prior to establishing e-mail communication with a patient, the physician

Figure 1

E-mail contract highlights for patients

After patients have read and signed an e-mail contract, and it is filed in their records, the physician may want to provide a pocket-sized summary of the contract's important points. Whether it's a laminated card for their wallets or a sticker affixed to the back of the physician's business card, an at-a-glance reference of the rules should help facilitate good e-mail communication.



should discuss the process with the patient and ask him or her to read and sign an online communications informed consent form.

This form may cover a variety of issues, including instructions for using online communications, good communication etiquette, charges for using online communications, conditions of using online communications, access to online communications, risks of using online communications and, finally, the patient's signature of acknowledgment and agreement. This information should become part of the legal documentation and medical record.

In addition to a copy of the informed consent form, you may want to provide patients with a wallet-sized summary of the contract's highlights. (See Figure 1.)

Appropriate and convenient uses for e-mail include scheduling appointments, releasing records (e.g., test results), providing follow-up instructions, explaining general medical information, answering billing questions, sending account reminders and refilling prescriptions.

Requests for new prescriptions should not be handled through e-mail. Instead, a good-faith examination of the patient should be performed in person to assess the medical necessity of any new prescription.

Physicians may consider prohibiting e-mail discussion of HIV test results, mental illness, alcohol or drug addiction and workers' compensation claims as well. At the very least, patients should be required to type "SENSITIVE" in the subject line of all e-mail pertaining to these issues.

Additionally, physicians should not answer clinical questions regarding a condition for which the patient has not been seen in the past

six months, according to guidelines published by the eRisk Working Group for Healthcare, a consortium of national medical societies and medical professional liability carriers—including The SCPIE Companies—and Medem, a network provider initially founded by the nation's medical societies that serves the healthcare industry.

The risks

E-mail is no different from verbal communication in that physicians must avoid medical jargon and express themselves clearly, using terms the average person can understand. They should also be mindful of tone, and edit out any inappropriate or unprofessional comments.

Online communications, however, have created new and unique challenges. The guidelines drafted by the eRisk Working Group for Healthcare and Medem offer physicians help in minimizing e-mail risks.

Specifically, the guidelines advise physicians to address the following issues:

Security—Do not use unsecure e-mail. Choose a vendor that complies with the Healthcare Insurance Portability and Accountability Act (HIPAA) standards by offering authentication and encryption—which standard e-mail services do not provide. Also, safeguard against unauthorized access to e-mail messages and computer hardware by using technologies such as automatic logouts and password protection.

Authentication—Take reasonable steps to confirm the identity of e-mail correspondents and ensure that the information goes only to persons who are authorized to receive it.

Confidentiality—Take reasonable steps to protect patients’ privacy by guarding against unauthorized use of their medical information. Detailed information on how to authenticate identity and protect patient confidentiality may be obtained from the Medem website (www.medem.com) or by contacting Medem at info@medem.com or 877/926-3336.

Unauthorized access—Establish procedures to help minimize the risk of unauthorized distribution of patient information.

Physician-patient relationship—Weigh carefully any move to initiate a physician-patient relationship solely through online interaction, as this can increase liability exposure. Payment for online services may further increase that exposure.

Medical records—Maintain a printed copy of all e-mail with patients regarding their ongoing medical care, and add this copy to the patients’ medical records. Inform patients of this policy.

Licensing jurisdiction—Online interactions with patients are subject to

state licensure requirements. Communicating online with a patient who lives outside of the state where you hold a license may increase your risk.

Authoritative information—Make sure that information you provide via e-mail or on a medical practice website either comes directly from you, or from a credible source and has been reviewed by you. You are responsible for the information that you provide or make available to your patients online.

Commercial information—Be careful of your wording in e-mail or on your website of an advertising, promotional or marketing nature. Such language may increase your liability, especially if it includes implicit guarantees, implied warranties, or misleading or deceptive claims.

For more detailed information on these issues, including sample policies and disclosures, log on to Medem’s website.

In addition, the American Medical Association (AMA) has published extensive e-mail guidelines of its own at www.ama-assn.org/ama/pub/category/2386.html.

The AMA guidelines include the following:

- As part of the informed consent process for establishing e-mail usage, tell patients who besides you processes messages during usual business hours, and who processes them when you are out sick or on vacation.
- Set up an automatic reply to acknowledge receipt of patients’ e-mail messages.
- When you answer patients’ e-mail, ask them to acknowledge receiving and reading it.
- At the end of all e-mail messages, insert your “electronic signature”—a preformatted standard block of text that contains your full name and contact information, as well as reminders about security and the importance of alternative forms of communication for emergencies. (See Figure 2.)
- Maintain a patient e-mail mailing list, but do not send group e-mails in which recipients’ names and/or e-mail addresses are visible.
- As with phone consultations, if the issue is too complex to discuss via e-mail, ask the patient to schedule an office visit.

Fee-based online consultations

A clinical consultation provided by a physician to a patient using the Internet or other similar electronic communications network in which the provider expects payment for service is known as a “fee-based online consultation.”

An online consultation that is given in exchange for payment introduces additional risks. In a fee-based online consultation, the physician has the same obligations for patient care and followup as in

Figure 2

Sample electronic signature for physician e-mail

John Smith MD
Dermatology
10 Main Street
Los Angeles, CA 90067
Phone: 310/555-1212
Fax: 310/555-4321
E-mail: jsmithmd@doctor.com

- Call the office if the matter is urgent.
- Call 911 in an emergency or go to the ER!
- Please follow security guidelines.

face-to-face, written and telephone consultations. For example, an online consultation should include an explicit follow-up plan that is clearly communicated to the patient.

Physicians thinking about engaging in fee-based online consultations need to consider the following issues, as compiled by the eRisk Working Group for Healthcare and Medem:

Preexisting relationship—Online consultations should ideally occur within the context of a previously established physician-patient relationship, one that includes a face-to-face encounter when clinically appropriate.

Informed consent—Prior to the online consultation, the physician must obtain the patient's informed consent to participate in the consultation for a fee. The consent should include explicitly stated disclaimers and service terms pertaining to online consultations. The consent should establish appropriate expectations between physician and patient.

Professional liability carriers participating in the eRisk Working Group for Healthcare have created informed consent language to educate patients and help minimize physician liability.

For further information, contact SCPIE Risk Management or Medem.

Fee disclosure—From the outset of the online consultation, the patient must be clearly informed about charges that will be incurred and that the charges may not be reimbursed by the patient's health insurance. If the patient chooses to not participate in the fee-based consultation, the patient should be encouraged to contact the physician's office by phone or other means.

Appropriate charges—An online consultation should be substantive, clinical in nature and specific to the patient's health status. There should be no charge for online administrative or routine communications such as appointment scheduling and prescription refill requests. Physicians should consider not charging for follow-up questions on the same subject as the original online consultation.

Identity disclosure—Clinical information that is provided to the patient during the course of an online consultation should come from, or be reviewed in detail by, the consulting physician, whose identity should be made clear to the patient.

Available information—Physicians should state that the online consultation is based only upon information made available by the patient to the physician during, or prior to, the online consultation, including referral to the patient's chart when appropriate. The physician should also state that the consultation may not be an adequate substitute for an office visit.

Conclusion

While few physicians currently use e-mail to communicate with patients—13% to 23%, according to recent studies—patients' desire to e-mail their doctors appears to be growing. A recent survey by Jupiter Media Metrix (New York) found that 54% of patients would switch to a doctor who permits the use of e-mail to schedule appointments and renew prescriptions, as well as to ask treatment questions and check lab results.

Given patients' increasing interest in online dialogue with their doctors, an increasing number of physicians may soon be moving from the hypothetical to the "how-to" of initiating e-mail interaction. The guidelines outlined in this article were drafted to address physicians' practical concerns regarding security, confidentiality and liability risk. When those concerns are met, many more physicians may begin to explore the practical potential of e-mail with patients.

For additional information, contact a SCPIE risk manager at 800/585-7799.

Test your knowledge! *Want to know more about e-mail communication with patients? Log on to our website at www.scpie.com, click on the Risk Management section and take a short quiz on the subject.*

Elaine M. Ziemba
Vice President/Risk Management

Michael Mango
Risk Management Writer

Janice Nagano
Editor
jnagano@scpie.com

Luis Dueñas
Illustrator

Safe Practice is published bimonthly by
The SCPIE Companies
1888 Century Park East, Suite 800
Los Angeles, CA 90067-1712
www.scpie.com

Risk Management Hotline
800/585-7799