

# MIEC Claims Alert

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## Using email to communicate with patients: What physicians should consider

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*Electronic mail (email) is a popular choice for communicating with friends, relatives, and businesses; however, physicians and patients alike have been slow to embrace this medium for the exchange of health-care information. Studies have been conducted to determine how frequently and under what circumstances physicians and their patients interact via email, or why they do not. Numerous resources are available to physicians interested in email that outline the benefits and liability risks affiliated with electronic communication.*

*As with all aspects of a physician's practice, MIEC encourages policyholders to consider the pros and cons of any new policy and procedure, technology, or system, before its implementation. Email can be a valuable time-saving communication tool, but if started in haste may create liability problems for physicians. Before you use email in your practice, and especially before you encourage patients to communicate online with your office, consider these advantages and disadvantages.*

### Opinions vary

**Pros:** According to many articles that have been written to delineate the positive and negative features

of email, opinions vary greatly among physicians and their patients. Benefits discussed by physicians who advocate the use of online communication include, in part:

**(A) Electronic communication may enhance patient compliance with treatment recommendations.**

In one publication, a contributing internist used as an example his patients who engage in frequent business travel, for whom it is difficult to return frequently to the physician's practice, but who require close monitoring (e.g., Coumadin patients and prothrombin times; Statin patients and liver function tests). These patients can be reminded by email that follow-up lab work is needed and, once the diagnostic test has been completed and returned, the results can be emailed to the patients.

**(B) Email improves efficiency when scheduling appointments and processing non-narcotic medication refills requested by established patients.**

One family practice physician reported that his staff can schedule an appointment in two minutes online compared to 10-12 minutes over the phone.

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**(C) Email allows physicians to use time more effectively when answering patients' routine medical questions.** One doctor said that he is able to answer three or four routine online messages in far less time than it takes to make three or four phone calls, and he feels less rushed.

**(D) Documentation of electronic communication is better than telephone-based encounters.** Email documentation reflects exactly what the patient asked and what the health care provider advised, unlike documentation of phone calls that is often quite abbreviated, inadequate, or altogether nonexistent. **Of note:** Physicians and staff members who communicate with patients via email should be aware that "deleted" email is never truly deleted. As "electronic discovery" becomes more common in malpractice litigation, any information stored on a hard drive or on back-up tapes can be retrieved, whether or not the data has been "deleted."

**Cons:** Physicians who resist using email to communicate with patients give two primary reasons for their avoidance of the electronic medium:

**(A) Physicians question the security of protected health information transmitted via email.** To minimize these concerns, some physicians use secured online services such as:

- RelayHealth ([www.relayhealth.com](http://www.relayhealth.com)) based in Emeryville, California;

- Medem, ([www.medem.com](http://www.medem.com)), a company owned in part by the AMA;
- Healthyemail ([www.healthy-email.org](http://www.healthy-email.org)); or
- MyDocOnline Inc., an organization owned by Aventis Pharmaceuticals.

Health care providers who offer online consultations charge patients a fee for the service. For example, many physicians in the Medem network charge \$25 per consultation; Medem withholds a \$2.50 usage fee per transaction, but only if the doctor charges the patient. **(Please note:** MIEC does not endorse any of the products, services, or third-party payers mentioned in this newsletter.)

**(B) Health care plans do not reimburse physicians for time spent online consulting with patients.** An exception is Blue Shield of California. Its network physicians may be paid \$20 per email consultation for minor, non-urgent matters if they use RelayHealth's secured system.

### **MIEC recommends**

MIEC welcomes all technologies that enhance a medical practice. We recommend that physicians decide for themselves which technologies would benefit their practice and their patients, and make informed decisions when purchasing and using computer software, hardware and consulting services. Consider these loss prevention recommendations as you develop your email policies:

### **Educate yourself and your staff about the software and hardware aspects of your email system.**

Investigate the reliability and the capacity of your Internet service provider (ISP). Ask if there is a limit on the number of messages or size of messages your individual email in-box can handle. What happens if the capacity is exceeded? (Some ISPs delete older, and possibly unread, messages when a user's in-box is full while others reject new messages until the old ones have been read.) Be sure you know what your ISP will do and be sure that your staff checks email often enough to make sure nothing, new or old, is lost or rejected.

### **Decide how you will use email in your office.**

Establish a written policy and procedure in your practice that defines how you and your staff will handle email. To avoid being overwhelmed with email messages that require in-depth and/or immediate responses:

- (1) Communicate via email only with established patients;
- (2) Limit the types of communication to which you will respond (e.g., to: schedule appointments, request non-narcotic prescription refills, report normal diagnostic test results, give medical advice for non-urgent medical concerns);
- (3) Avoid using email to discuss highly-sensitive issues (e.g., HIV test results, STD test results,

mental health information, questions of a sexual nature);

(4) Do not use email to report abnormal test results – a physician should report these to patients in person or by phone, to ensure the patient receives and understands the significance of the information, can ask questions, and is able to obtain the doctor’s follow-up advice;

(5) Determine who in your practice will respond to different categories of messages (e.g., appointments by scheduling staff; medication refills and normal test results by nursing staff after your review and authorization, etc.);

(6) Educate patients about the limitations of your ability to make medical evaluations and diagnoses, dispense medical advice, or prescribe new medications in response to an email inquiry;

(7) Print and initial a hard copy of patients’ email messages and your responses; file the copy in patients’ charts;

(8) As recommended by the American Medical Association’s *Guidelines for Physician-Patient Electronic Communications* (available at the AMA’s web site: [www.ama-assn.org](http://www.ama-assn.org)), configure an automatic reply to patients to acknowledge receipt of their messages (e.g., “Your message has been received at the office of Dr. XX. If you have not heard from the doctor(s) within XX hours, please call, fax, or mail the office with your inquiry.

*Practice name, address, fax no., phone no.”*

(9) Establish a turnaround time for email messages so patients will know when to expect your response to their inquiries. How often will the incoming mailbox be checked? If your computer’s email in-box is always open (that is, your computer is always logged on to the Internet or the source of your electronic mail system), program the computer to sound a distinctive alert when new messages are received. If the computer is not continuously logged on to the email system or Internet, someone must start the program frequently to check for new messages. **Important: Activate the autoreply feature in your computer (or email system) to inform patients that you are unavailable when you are off-call or on vacation. Advise them how long you will be unavailable, and whom to contact (and how) in your absence;** and

(10) Ask patients to confirm that they received a message from you and/or your office.

### Draft written guidelines

Once you decide how you will use email in your practice, draft written guidelines to give patients who wish to correspond with your office using email. The guidelines should inform patients: (a) about the limitations of using email; (b) that messages/inquiries should be brief; (c) about the possibility that email will not be received in a timely manner; (d) what to do if their

email inquiries are not answered in a timely manner;

(e) about the possibility that improperly-addressed messages or replies could be received by unauthorized persons; and (f) that reporting medical problems to the doctor by email may not be a safe alternative to seeing the doctor. Inform patients that **they must decide** if their request can appropriately be satisfied by email. They must obtain an appointment or a telephone consultation with the doctor if they believe their medical need is significant.

### Ensure security of your electronic communication to protect patient confidentiality.

Lawyers, medical ethicists, patient advocates, and physicians alike are concerned about the potential breach of confidentiality of information transmitted electronically. Email messages that are misaddressed – as the result of an omission or mistyping of one letter or digit in the recipient’s email address – could reach the wrong party. Most ISPs return misaddressed messages as “undeliverable,” unless a mistyped address is the correct address for someone else. The promptness with which misdirected messages are returned varies among ISPs.

To safeguard against the possibility that a missent message is read by the wrong persons (or that a properly addressed message is read by someone who has access to the recipient’s mailbox), you may *encrypt* your

email responses – which means your office and the recipient must have the same encryption software. Inquire about encryption software to preserve the confidentiality of your email; if your email software program does not have encryption capabilities, you may have to purchase “add-on” software.

Consider enrolling with a secured online service. (See secured online services on page 2)

Another safeguard against potentially misdirected email is to add a disclaimer to online responses transmitted to patients. For example, include the notice, “This message is intended only for the use of the individual(s) or entity to which it is addressed, and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you received this communication in error, please notify the sender immediately by email. Thank you for your assistance.”

### **Develop and implement a written patient-clinician privacy agreement for the use of email.**

Require patients to agree to abide by the written guidelines for the use of email communication and to sign an authorization that gives you permission to communicate with them at a designated email address. [For a sample *Guideline/Agreement/Authorization* see *Figures 1 & 2.*]

### **Additional reading:**

Tyler Chin, “Online consultation: What’s it worth?” *AMNews*, June 10, 2002.

Tyler Chin, “Patients e-mail – but they still keep calling,” *AMNews*, June 10, 2002.

Ann Carrns, “Online Doctor Consultations Show Promise in Pilot Study,” *The Wall Street Journal Online*, October 24, 2002.

Tyler Chin, “Some California physicians will be paid for online advice,” *AMNews*, November 25, 2002.

Christine Wiebe, “Doctor-Patient Email: A Revolution Waiting to Happen,” *Medscape Money & Medicine*, 4(1), 2003.

Francesca Lunzer Kritz, “uncertainty@dr-mail.com,” *Washington Post*, April 1, 2003.

Mike Norbut, “Doctor redefines visits with phone, e-mail,” *AMNews*, October 20, 2003.

### **How to reach MIEC:**

#### **Phone:**

Oakland Office: 510/428-9411  
Honolulu Office: 808/545-7231  
Boise Office: 208/344-6378  
Outside: 800/227-4527

#### **Fax:**

Loss Prevention: 510/420-7066  
Oakland: 510/654-4634  
Honolulu: 808/531-5224  
Boise: 208/344-7903

#### **Email:**

Lossprevention@miec.com  
Underwriting@miec.com  
Claims@miec.com

#### **MIEC on the Internet: [www.miec.com](http://www.miec.com)**

John A. Doe, M.D. & Merry Roe, M. D.  
555 North Blank Street  
San Francisco, California 99991  
Phone: 415 + 555-1111 • johndoemd@aol.com

## For Our Patients

### Information About Email Communication and Our Email Policies

**You have asked to communicate with our office via email. To do so with safety and confidence, you must understand and agree to our guidelines. Please read the following information about email communication and our email policies. If you have any questions about what you read, please ask us or a member of our staff.**

**Following this information is an agreement that will protect your well-being and your confidentiality. If you understand our email policies and agree to adhere to them, please sign and date the form. We will give you a copy to take home. If, at any time, you wish to discontinue email communication with this office, please submit your request in writing to us or a member of our staff. Thank you for your cooperation.**

- Please be aware that email communication is not a substitute for a face-to-face encounter with a physician.
- It is our practice to make every effort to protect your confidential information in all communication. [Optional: List protection technology such as firewall, secure network, encryption, automatic logout, password protection, need-to-know access, etc.] We acknowledge, however, that no email is 100% secure. Even the most carefully protected messages are stored on a computer's hard drive. Though it is unlikely, this information could be retrievable. We cannot guarantee against unknown privacy violations such as unauthorized access achieved by illegal activity.
- We ask you to limit your email communication with us: to ask routine, non-urgent medical questions; to schedule an appointment; or to report a mild reaction to treatment.
- We will communicate with you via email only if you are an established patient. That means that we will communicate with one another only in the context of care that began with a face-to-face encounter.
- All email communication will be printed out and a hard copy will be filed in your medical chart.
- We will try to respond to email messages within XX hours. However, there is no way to guarantee that this will occur, for a variety of legitimate reasons. [Optional/examples: misaddressed email, server down, electric power failure, etc.] If you do not get a response from this office within XX hours, it is up to you to contact us by telephone, mail, fax, or in person.
- We do not accept medication refill requests by email unless the request was preceded by a recent exam in the office. Even then, good medical practice may mean that it is necessary for you to be seen before we can refill your medication.
- We will do our best to avoid technical problems. However, if a computer virus infiltrates our system, we cannot guarantee that we could prevent it from inadvertently passing to your computer.
- If we are out of the office or if we are with other patients, a medical assistant will print out email messages for us and, at our direction, may respond to you on our behalf.
- If you fail to adhere to our email policies, we will discontinue our communication with you via email.

**Please alert us to any questions you have about what you have read.**

*Figure 1*

John A. Doe, M.D. & Merry Roe, M. D.  
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San Francisco, California 99991  
Phone: 415 + 555-1111 • johndoemd@aol.com

## Our Agreement

**I wish to communicate with the office of Dr. XX and Dr. XX by email. I am aware that email communication is not 100% reliable or secure, but I acknowledge that the doctors and their staff assured me that they make every effort to protect my privacy, and I wish to use email to communicate with them.**

1. I am aware and agree that a hard copy of all email correspondence will be filed in my medical chart.
2. I agree to include my name, home or mailing address and telephone number in the body of all email I send to my doctors' office to ensure that they have an alternate means of contacting me.
3. I will limit my email to: ask routine, non-urgent medical questions; make an appointment; request a non-narcotic prescription refill; or report a mild reaction to treatment.
4. I agree to fill in the subject line of each email to alert the doctors and their staff of the purpose of my message. (e.g., REFILL; QUESTION; APPOINTMENT; etc.)
5. I will not email my doctor regarding emergencies, as I am aware that time-sensitive matters are not appropriate for email communication.
6. I will not communicate by email about information or questions related to 1) highly sensitive subjects such as HIV/AIDS or STDs; 2) questions or problems of a sexual nature; 3) alcohol or drug dependence or treatment; or 4) questions about my mental health.
7. If I do not get a response to my email within XX hours, I will contact the doctors or their staff via other means.
8. I know I am responsible for following the medical advice the doctors convey to me by email.
9. I accept that if I fail to follow this agreement related to our email correspondence, that the doctors will limit my correspondence to more traditional means, such as the telephone and/or US mail.
10. I request and authorize the doctors or their staff to communicate my routine negative lab results to me via email.
11. I have asked all the questions I had about the doctors' email policies and my questions were answered to my satisfaction. I understand the policies and agree to abide by them in full.
12. [**Optional:** I agree to pay the doctors' fees for email communication in the event my health insurance does not cover the charges.]

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**Patient's signature**

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**Date**

---

**Patient's email address**

---

**Doctor's signature**

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**Date**

**cc to patient**

**Figure 2**