



## PATIENT SAFETY STRATEGIES

### BEFORE YOU HIT SEND

The [first email](#) was sent in 1971, the [first text message](#) in 1992, and people sharing their thoughts have not paused since. Those novelties are now commonplace to virtually everyone, including physicians and other health care providers communicating about patients—and sometimes about adverse events. Because they are ubiquitous and seemingly ethereal, it's easy—especially for less-experienced physicians—to forget that emails and (some) texts are part of the medical record, including some messages that could one day be excerpted and projected during a medical malpractice trial.

In the investigation of a medical professional liability (MPL) claim or lawsuit, emails or texts sent to a colleague, or the patient, may be subject to legal discovery. And if a colleague who was also involved in that patient's care responded in a way that the plaintiff considers relevant, that colleague can be called as a witness or added to the case.

Even when a message does not directly reference substandard care, it can raise questions about professionalism, discrimination, chronic problems (“that’s the third time this month”) and other red flags. Of course, cringeworthy comments about a patient or colleague or equipment can render otherwise defensible MPL cases indefensible. But what most health care professionals need to be most wary of are more ambiguous comments that could be interpreted as damning by jurors pointed in that direction by a plaintiff’s attorney. Perception trumps intent.

An MPL proverb, “[If it wasn't documented, it wasn't done.](#)” speaks to the need for appropriate documentation of the patient’s care. Today it is equally fair to say that, if it was texted or emailed without thinking about how a third party might interpret it, then it should not have been sent. Indeed clinicians should assume that anything they write (with fingers or thumbs) about a patient will be read, and may be read in an unconsidered context.

Against the backdrop of all patient encounters—and all patient-related communication—MPL cases are rare. Ruing a couple of prickly texts from three years ago probably isn't worthwhile. But thinking about potential consequences of what you say in your email or text from today forward, could save you unnecessary hassles.

Advice is only helpful if we can recall it when most needed. If you're sending a text in a fit of annoyance, under the stress of too much juggling, in the distraught aftermath of an adverse event, it is unlikely you will have a list of tips at hand or in mind. Making tips a habit is a good start, but perhaps forcing yourself to pause every time before you hit SEND, and consider how your words will look projected in a courtroom, is the best way to finish.

### TIPS TO MINIMIZE LIABILITY WHEN TEXTING AND EMAILING ABOUT PATIENTS

- ✔ **It's part of the record:** Remember that your messages about/to/from patients are part of their medical records
- ✔ **Nothing's private:** Assume anything you write about a patient may eventually be seen by that patient (and their lawyer)
- ✔ **Don't editorialize:** Like with all medical record documentation, avoid non-clinical commentary in patient-related texts or emails
- ✔ **Words matter:** Avoid workplace slang and shorthand that may be considered inappropriate by patients
- ✔ **HIPAA matters:** Be aware of the [rules](#) about texting patient health information
- ✔ **Keep your hands clean:** If a colleague inappropriately shares patient-related information via text or email, keep your responses (if any) neutral lest you position yourself as a potential MPL case witness
- ✔ **Don't undo:** Once you become aware of an adverse outcome or MPL case, do not attempt to change, erase, or delete emails or texts that worry you. First, such messages are nearly impossible to delete and second, such actions are nearly impossible to defend. Inform your risk manager, MPL representative, or defense attorney of any potentially problematic messages.
- ✔ **Be anti-social:** Do not post patient (or incident) centered messaging on Twitter, Facebook, Instagram, etc. They are just as discoverable as texts and emails.

