

## The Electronic Communications Minefield: Navigating eRisk for Dentists and Staff



Chester J. Gary, DDS, JD  
Clinical Assistant Professor  
University at Buffalo School of Dental Medicine

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[gary@buffalo.edu](mailto:gary@buffalo.edu)

Information contained in this learning material is for general educational purposes only and should not be used as a substitute for legal advice. Rather, it is intended to provide general risk management information only. Legal advice should be obtained from qualified counsel to address specific facts and circumstances to ensure compliance with applicable laws and standards of care.

## SUGGESTED CONTENT OF PATIENT E-MAIL CONSENT FORM

### Risk of Using Email

- Let patients know transmitting patient information electronically poses several risks of which they should be aware. They should not agree to communicate with the dentist via email without understanding and accepting these risks, which include, but are not limited to, the following:
  - Email can be forwarded, intercepted, circulated, stored or even changed without the knowledge or permission of the dentist or the patient.
  - Email senders can easily misaddress an email, resulting in it being sent to many unintended and unknown recipients.
  - Email is permanent. Even after the sender and recipient have deleted their copies of the email, backup copies may exist on a computer or in cyberspace.
  - Employers and online services may have a legal right to inspect and keep emails that pass through their system.
  - Use of email to discuss sensitive information can increase the risk of such information being disclosed to third parties.
  - Emails can introduce viruses into a computer system, and potentially damage or disrupt the computer.

### Conditions for the Use of Email

- Let patients know the dentist cannot guarantee, but will use reasonable means to maintain, security and confidentiality of email information sent and received. The conditions to which the patient must consent include, but are not limited to the following:
  - Email is not appropriate for urgent or emergency situations. The dentist cannot guarantee that any particular email will be read or responded to within any particular period of time.
  - Assuming the dentist uses encryption software as a security mechanism for email communications, patients must agree to, and comply with, the use of the encryption software.
  - The patient should not use email for communication regarding sensitive medical or financial information.
  - The patient is responsible for informing the dentist of any types of information they do not want sent by email and can list specific information they do not want communicated by email. They can add to or modify this list at any time by notifying the dentist in writing.
  - Emails to or from patients concerning diagnosis or treatment shall be printed in full and made part of their dental record. Because they are a part of the dental record, other individuals authorized to access the dental record, such as staff and billing personnel, will have access to those emails.

- Email communication is not an appropriate substitute for clinical examinations. The patient is responsible for the follow up on the dentist's email and for scheduling appointments where warranted.
- Patient messages may also be delegated to another dentist or staff member for response. Office staff may also receive and read or respond to patient messages.
- Emails must be concise. Patients should schedule an appointment if the issue is too complex or sensitive to discuss via email.
- Recommended uses of patient-to-dental practice email should be limited to:
  - Appointment requests
  - Prescription refills
  - Requests for information
  - Non-urgent health care questions
  - Updates to information or exchange of non-critical information, such as changes of address, telephone number, insurance coverage, financial eligibility, etc.

### Instructions

- Inform patients that, to communicate by email with your practice, they must follow your instructions, which should include but not be limited to:
  - Avoid use of their employer's computer
  - Inform the dentist of changes in their email address
  - Put the topic in the subject line, e.g. dental question, billing question.
  - Inform the dentist that they received the email
  - Take precautions to preserve the confidentiality of emails, such as using screen savers and safeguarding computer passwords
  - Put their name in the body of the email
  - Contact the dentist via conventional communication methods (phone, fax, etc.) if they do not receive a reply within a reasonable period of time

### Written Patient Acknowledgment and Agreement

- Read, understand risks
- Consent to conditions and instructions
- Acknowledge the dentist's right to withdraw option of email communication
- Any questions answered
- Signatures

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## Sample Disclaimer

### Notice to Website Viewers:

This web site is provided for information and education purposes only. No doctor/patient relationship is established by your use of this site. No diagnosis or treatment is being provided. The information contained here should be used in consultation with a dentist of your choice. No guarantees or warranties are made regarding any of the information contained within this web site. This web site is not intended to offer specific medical, dental or surgical advice to anyone. Further, this web site and our practice take no responsibility for web sites hyper-linked to this site and such hyperlinking does not imply any relationships or endorsements of the linked sites.

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## Opinion 9.124 - Professionalism in the Use of Social Media

The Internet has created the ability for medical students and physicians to communicate and share information quickly and to reach millions of people easily. Participating in social networking and other similar Internet opportunities can support physicians' personal expression, enable individual physicians to have a professional presence online, foster collegiality and camaraderie within the profession, provide opportunity to widely disseminate public health messages and other health communication. Social networks, blogs, and other forms of communication online also create new challenges to the patient-physician relationship. Physicians should weigh a number of considerations when maintaining a presence online:

(a) Physicians should be cognizant of standards of patient privacy and confidentiality that must be maintained in all environments, including online, and must refrain from posting identifiable patient information online.

(b) When using the Internet for social networking, physicians should use privacy settings to safeguard personal information and content to the extent possible, but should realize that privacy settings are not absolute and that once on the Internet, content is likely there permanently. Thus, physicians should routinely monitor their own Internet presence to ensure that the personal and professional information on their own sites and, to the extent possible, content posted about them by others, is accurate and appropriate.

(c) If they interact with patients on the Internet, physicians must maintain appropriate boundaries of the patient-physician relationship in accordance with professional ethical guidelines just, as they would in any other context.

(d) To maintain appropriate professional boundaries physicians should consider separating personal and professional content online.

(e) When physicians see content posted by colleagues that appears unprofessional they have a responsibility to bring that content to the attention of the individual, so that he or she can remove it and/or take other appropriate actions. If the behavior significantly violates professional norms and the individual does not take appropriate action to resolve the situation, the physician should report the matter to appropriate authorities.

(f) Physicians must recognize that actions online and content posted may negatively affect their reputations among patients and colleagues, may have consequences for their medical careers (particularly for physicians-in-training and medical students), and can undermine public trust in the medical profession. (I, II, IV)

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**Eighth District Dental Society  
of the State of New York**

3831 Harlem Road Buffalo, N.Y. 14215  
(716) 995-6300 FAX (716) 995-6305

American Dental Association 800-621-8099  
New York State Dental Association 800-255-2100

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**From the Editor**

**AS PROFESSIONALS, USE SOCIAL MEDIA TO PROMOTE DENTISTRY, NOT OURSELVES**

By Chester J. Gary, DDS, JD



Facebook, Twitter, LinkedIn, YouTube, Private Blogs. As social media use explodes in today's society, dentists feel increased pressure to maintain an online presence. Since these powerful internet tools disseminate information to millions quickly, and with permanency, they present significant new challenges to the individual dentist's reputation, and the image and status of dentistry as a profession. How dentists and organized dentistry utilize and respond to social media will, in great part, determine whether the public will view dentistry as a profession or trade.

Key characteristics which distinguish dentistry as a profession rather than a trade include the obligations to place the best interests of patients above the dentist's self-interest, to respect patients' autonomy and privacy in the dentist-patient relationship and to value the trust between dentistry and the public above that of unrestricted trade. Three main uses of social media test dentists' adherence to these traits.

First, patients increasingly turn to internet websites to research their health related questions before they visit the dentist. The danger arises when they encounter unreliable and inaccurate information from financially biased sources. When patients demand inappropriate treatment based upon misinformation or misconceptions obtained online, dentists who maintain a commercial view of dentistry often use this as an opportunity to sell unnecessary or ill-advised treatment for the dentist's financial gain. This passive deception violates the dentist's obligation to place the best interests of the patient above self-interest. Patients treated in this manner will ultimately view dentists as opportunistic sales persons they need to guard against rather than caring professionals that guard them.

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Second, social networking provides opportunities for dentists to "friend" patients on Facebook, respond to patient criticisms on practice rating sites, or post treatment-related information on blogs. Communications that directly or indirectly identify a patient violate the HIPAA privacy rule and the professional obligation to protect patient confidentiality.

Since social media distributes information instantaneously to a wide audience and creates a permanent electronic record, likely discoverable in litigation, it magnifies these risks. Dentists' careless management of protected health information online will dissipate patients' trust in the dentist-patient relationship. Patients will begin to view this private and long-term relationship as more of a public commercial transaction.

Third, social media can function as the ultimate practice marketing tool. However, when dentists post negative or unethical advertising on the internet where they claim superiority over other similarly credentialed practitioners, it undermines the public trust in other dentists. Use of arguably false and misleading persuasive tactics further indicates to the public that dentists hold a commercial view of their own calling where unrestricted competition supersedes the public trust in dentistry. Patients conclude that, like other trades, they can no longer expect standardized quality among dentists.

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## Social Media

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Dentists and organized dentistry must meet the challenges of social media to maintain our reputation as professionals. Individual dentists must respond to misinformation online, threats to patient privacy and misleading marketing in light of the obligations that define dentistry as a profession. Rather than succumb to the risks of social media, we must manage internet tools to educate patients regarding the importance of oral health in their overall health and the options dentistry offers to achieve it. In addition, organized dentistry must formulate a social media policy to guide practitioners in its appropriate use. As a profession, we can succeed if we utilize social media as an opportunity to promote dentistry, not ourselves.

Please address any questions or comments to Chester J. Gary, DDS, JD at [garyddsjd@roadrunner.com](mailto:garyddsjd@roadrunner.com). ■

## Hidden Treasures *Continued from page 3*

wonderful job promoting and protecting our profession.

This is what I mean by hidden treasures found in organized dentistry. You may not notice it every day but in the long run the intangible benefits come shining through. Once again, thank you for the opportunity to serve as your President and if you need to contact me, my office phone number is 716-297-1675 and my email is [drndowd@msn.com](mailto:drndowd@msn.com).

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