2.3.1 Electronic Communication with Patients

Electronic communication, such as email or text messaging, can be a useful tool in the practice of medicine and can facilitate communication within a patient-physician relationship. However, these channels can raise special concerns about privacy and confidentiality, particularly when sensitive information is to be communicated. When physicians engage in electronic communication they hold the same ethical responsibilities to patients as they do during other clinical encounters. Any method of communication, virtual, telephonic, or in person, should be appropriate to the patient's clinical need and to the information being conveyed.

Email correspondence should not be used to establish a patient-physician relationship. Rather email should supplement other, more personal encounters.

Physicians who choose to communicate electronically with patients should:

(a) Uphold professional standards of confidentiality and protection of privacy, security, and integrity of patient information.

(b) Notify the patient of the inherent limitations of electronic communication, including possible breach of privacy or confidentiality, difficulty in validating the identity of the parties, and possible delays in response. Such disclaimers do not absolve physicians of responsibility to protect the patient's interests. Patients should have the opportunity to accept or decline electronic communication before privileged information is transmitted. The patient's decision to accept or decline email communication containing privileged information should be documented in the medical record.

(c) Advise the patient of the limitations of these channels when a patient initiates electronic communication.

(d) Obtain the patient's consent to continue electronic communication when a patient initiates electronic communication.

(e) Present medical information in a manner that meets professional standards. Diagnostic or therapeutic services must conform to accepted clinical standards.

(f) Be aware of relevant laws that determine when a patient-physician relationship has been established.

AMA Principles of Medical Ethics: I,IV,VI,VII

Background report(s):

CEJA Report 3-A-16 Modernized *Code of Medical Ethics*

CEJA Report 3-I-02 Ethical guidelines fo the use of electronic mail between patients and physicians

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AMA Principles of Medical Ethics: I,IV,VI,VII

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 3-I-02

Subject: Ethical Guidelines for the Use of Electronic Mail between Patients and Physicians

Presented by: Leonard J. Morse, MD, Chair

Referred to: Reference Committee on Amendments to Constitution and Bylaws
Rowen K. Zetterman, MD, Chair

INTRODUCTION

Whenever new technologies are introduced, physicians must evaluate the ethical implications of such changes. This report examines the ethical implications of electronic textual communication, focusing on the use of electronic mail (e-mail), and considers both its impact on a previously established patient-physician relationship and its use in the creation of a new patient-physician relationship.

It is important to note that a physician's use of e-mail presents legal issues, such as inter-state licensing restrictions, and potential liability issues, which are separate from the ethical issues. This report will address some issues that are commonly considered under the law, such as privacy, confidentiality, and informed consent, by focusing on their ethical considerations.

Brief Overview: History of Communication between Patients and Physicians

During the 17th and 18th Centuries, patients and physicians often had to travel great distances to meet face-to-face. Therefore, the majority of diagnoses were based on written narratives rather than physical examinations.[1] This practice began to shift at the beginning of the 19th Century, when improved transportation enabled physicians to travel to the patient's home. The advent of the telegraph increased the timeliness of written communication physicians had with their patients,[2] as did the later development of the telephone and facsimile. These new modes of communication did not come without reservations by both patients and physicians, but today they have become necessary aspects of modern medical practice.

ETHICAL IMPACT OF E-MAIL ON THE PATIENT-PHYSICIAN RELATIONSHIP

Defining the Patient-Physician Relationship

The patient-physician relationship is the therapeutic alliance, which enables medical care. According to the recent CEJA Opinion 10.015 "The Patient-Physician Relationship," mutual agreement between physician and patient is central to the establishment of a therapeutic relationship. The Opinion also emphasizes that such a relationship is based on trust, and gives rise to physicians' ethical obligation to advocate for patients' welfare and to place patients' welfare above other considerations. Finally, it concludes that, within the patient-physician relationship, a

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* Reports of the Council on Ethical and Judicial Affairs are assigned to the reference committee on Constitution and Bylaws. They may be adopted, not adopted, or referred. A report may not be amended, except to clarify the meaning of the report and only with the concurrence of the Council.

physician is ethically required to use sound medical judgment, holding the best interests of the patient paramount.

CEJA Opinion 10.01, "Fundamental Elements of the Patient-Physician Relationship" presents guidelines that encourage physicians to foster their relationships with patients by providing information, encouraging autonomous decision-making, acting respectfully and in a timely manner, preserving confidentiality, ensuring continuity of care, and facilitating access to care.[3] In providing information and allowing autonomous decision-making, physicians build the trust of patients, which is central to the patient-physician relationship.

There are several phases in the cultivation of a patient-physician relationship such as choice, diagnosis, and treatment. The "choice" phase allows both the patient and physician exercise their ability to choose whether or not to enter into a medical service relationship. The patient embarks on the process of choosing a physician and the physician, in turn, chooses whether to offer medical services to a patient. Physicians' exercise of this choice within specific limits is reflected in Opinion 10.05 "Potential Patients: Ethical Consideration" which states, "Physicians must keep their professional obligations to provide care to patients in accord with their prerogative to choose whether to enter into a patient-physician relationship."[4] After the patient and physician have mutually agreed to enter into a relationship – an act that is more often implicit than explicit – the "diagnosis" phase generally will entail the patient communicating his or her symptoms, the physician obtaining a medical history of the patient, completing an examination, and ordering diagnostic tests in order to reach a diagnosis. The diagnosis of the patient's ailment leads the patient-physician relationship to another phase of "treatment," and continuity of care, particularly in the context of a chronic condition. The physician recommends a specific course of treatment to the patient and also may refer the patient to ancillary services (e.g. social worker, hospice, rehabilitation).

At each phase of the patient-physician relationship, six elements can be identified which lend themselves to the "ideal" patient-physician relationship.[5] Elements related to choice, competence, communication, compassion, continuity, and conflict of interest are found at each phase of the patient-physician relationship, either in relation to one of the two parties, or to both. Specifically, the element of choice, identified above as a phase, refers to both the patient and physician willingness to enter into a relationship. The diagnosis phase involves communication on the part of both parties, and competence and compassion on the part of the physician. Finally, the phase involving treatment incorporates choice on the part of the patient, communication between both parties, and compassion and continuity of care being provided by the physician. In all phases, the physician and patient should be mindful of any conflicts of interest that may arise in the context of the relationship.

Use of E-mail

An e-mail message is similar to a letter. E-mail typically is used for conversations that are not urgent and for dialogues that are expected to continue over a period of time. The structure of e-mail eliminates interruptions associated with telephone conversations or electronic pagers.[6] It also permits asynchronous communication, which can benefit both the sender and the recipient in our busy society.

There are several potential benefits for patients and physicians who use e-mail. Patients may feel more comfortable in addressing complex, sensitive, or personal issues if the interactions are conducted in writing rather than face-to-face. The use of e-mail allows time to construct a

thoughtful, structured message. Also, e-mail is largely self-documenting, which is crucial for the integrity of the medical record.[8] This concept was reflected in a recent Board of Trustees report which stated that e-mail between patients and physicians should be retained, whenever possible and appropriate.[7] These factors help make e-mail a convenient means of communication, [8] which makes it attractive to some physicians, despite the fact that currently they are rarely compensated for e-mail communication, or are compensated at rates significantly lower than for office visits.[10] Finally, e-mail can solve issues related to large distances or patients' inability to travel to receive follow-up care.

However, there are potential drawbacks to the use of e-mail, specifically when exchanging sensitive information such as personal health information. For example, concerns may be raised regarding the authenticity of the parties involved, the validity of the information that is exchanged, the disparities between both parties' expectations, the standard of care, and the preservation of the patient-physician relationship.

For many e-mail users, the authentication of parties is particularly problematic both in terms of determining whether the person requesting medical care is in need of it, and whether the provider of medical services is a licensed physician. From a patient perspective, it is difficult to determine whether information provided is an automated response or whether it is a personalized response from a qualified health care professional.

It should be noted that similar concerns may arise in the context of face-to-face encounters, or when other means of communication (telephone, fax) are used. Moreover, it should be acknowledged that all communication technologies currently in use can be misused, and that there are always some risks of misrepresentation or fraud.

Nevertheless, communication via e-mail deserves to receive careful consideration because it is a relatively new practice, and all its limitations are not yet fully understood. With proper safeguards, it is likely that e-mail will become an accepted form of communication between patients and physicians that raises no greater concerns than today's telephonic or in-person encounters. Until these safeguards are enunciated, however, patients and physicians should proceed with some caution regarding the appropriate boundaries for this form of communication, since legal guidance is evolving rapidly and no single set of voluntary guidelines has received widespread endorsement.

<u>E-mail in an Established Patient-Physician Relationship</u>

Before e-mail is used in an established patient-physician relationship, physicians should notify their patients of some of the limitations inherent to this form of communication, such as risks related to security or simply limitations regarding response-time. Proper notification of these issues will ensure that patients know, in advance, of the potential risks and benefits of using e-mail. For example, an in-office discussion could be used to establish the scope or nature of information communicated over email and expected response time. For example, physicians could clarify whether or not they intend to communicate diagnostic test results, discuss the use of medication, or coordinate appointments over email, and whether messages will be triaged by another health care professional. Also, physicians should raise potential security and privacy concerns with their patients.

It is also important that physicians be mindful of new regulatory safeguards that require proper notification of privacy practices that require description of the uses and disclosures of health information and of patients' rights. In order to protect the ethical integrity of electronic

communication, it also is important to provide patients with specific information, which identifies the risks and benefits of e-mail communication. However, it is important to note that such information to a patient should not be viewed as a disclaimer that absolves physicians from responsibility. Rather, the information should help ensure that patient's expectations match the physician's intent, when e-mail communication is used.

Most importantly, physicians and patients must be mindful that using e-mail may limit the physician's ability to appropriately address the patient's medical condition. Physicians must clearly articulate to the patient that the use of e-mail entails such limitations. The need for these limitations may vary according to the nature of the care being provided. For example, providing advice on diet and exercise may be different from the complexity of advising a patient regarding a new diagnosis such as an aortic aneurysm, or the sensitivity of discussing reproductive health care. Also, technological advances are likely to influence the ability to provide care electronically. Certain diseases may lend themselves to electronic monitoring, whereas other conditions will continue to require considerably more physical interaction between patient and physician. Within each relationship, the patient and the physician must decide what topics are considered appropriate for e-mail, perhaps reserving certain topics for in-person visits. It will be important for each medical specialty to evaluate the particular scope of communication or services that can be provided by e-ail [1] and other electronic means of communication.

Use of E-mail to Establish a Patient-Physician Relationship

A study conducted in 1998 reported physicians' responses to unsolicited e-mail that requested medical advice.[9] In general, the physicians who responded were concerned with the authenticity of the e-mail author and his or her medical condition; they also were cautious in their responses, mindful of the possibility of providing an inaccurate diagnosis.[9] In addition, the study revealed significant inconsistencies in the medical advice offered to patients.

Indeed, establishing a patient-physician relationship through e-mail generally has been viewed as problematic, and current literature suggests that the use of e-mail outside of a pre-existing relationship is medically and ethically objectionable. Ethically, these concerns are related to preserving the integrity of the patient-physician relationships. The use of e-mail must be based on the essential responsibility of the physician to strive always to foster an element of trust. There are reasons to question whether e-mail communication in the absence of a prior relationship meets the professional commitment to promote the patient's best interests, or whether it becomes merely a commercial activity where patients, as buyers, must be suspicious of the quality of the services and the competency of physicians providing them. Indeed, if the physician's financial interests solely were to drive the use of email rather than the patient's medical interests, the use of e-mail in the patient-physician relationship would result in the substitution of the notion of "buyer beware" in place of the notions of trust and professionalism.

When receiving unsolicited e-mails from potential patients who request diagnostic, therapeutic, or prognostic advice, the physician should consider the authentication of the correspondent, the validity of the information, the expectations of the other party, the standard of care, and the ethical establishment of a patient-physician relationship.

Answering unsolicited e-mails also can become time-consuming, and could result in providing incomplete or inappropriate medical advice. Physicians who use e-mail, therefore, should proceed carefully in responding to patient initiated emails and, preferably, should develop a clear policy regarding responding to such e-mails. An appropriate response might be a brief reply explaining

that the physician cannot provide assistance through e-mail unless a proper patient-physician relationship is established through an in-person visit, therefore encouraging the patient to seek medical care through a personal encounter. However, a message that requests an appointment or information of a non-clinical nature, such as fees or hours, is considered administrative in nature and can be answered without ethical concern. A response to these patient-initiated inquiries also can facilitate setting the terms for email use, by including an appropriate notification of the scope and nature of the physician's use of email.

Other Considerations in Using E-mail

Privacy and Confidentiality Concerns and other Limitations to E-mail

Only 13% of physicians have incorporated e-mail into their patient-physician relationship[10] but as many as 39% would use the technology if security and privacy were guaranteed.[11] E-mail messages that are misdirected or get deleted or lost prior to receipt by the intended party can be a threat to privacy and confidentiality.[12] Patients who use shared e-mail accounts at home may also place privacy and confidentiality at risk. Similar concerns arise when patients use e-mail accounts in the work place. Many businesses monitor e-mail activity, making messages vulnerable to interception by employers.[8]

At a minimum, measures should be taken to require that e-mail messages be accompanied by certain identifiers to authenticate both parties, such that physicians would assign identification numbers to existing patients and unknown patients would be required to include identifying information in their e-mail. Technology that helps ensure the authenticity of individuals should be considered to meet this requirement.

Access

Perhaps one of the most significant ethical implications e-mail poses is in relation to disparity in health care access. At this time, e-mail and related Internet access continues to be skewed toward more wealthy, more educated users.[13] However, many patients do not have the literacy skills to access health information on the Internet; others may have language barriers. Many more patients have not been educated in computer use or do not have home access to e-mail. Finally, free service in libraries and schools is largely dependent upon the wealth of a community and certainly raises issues of privacy and confidentiality. Therefore, attention to access barriers is necessary from the entire medical profession as it moves toward the incorporation of e-mail into the patient-physician relationship.

Proper Communication about the use of E-Mail

When considering using e-mail, physicians should view such a decision in terms of proper notification or disclosure of limitations inherent to this means of electronic communication. It should remain clear that there are alternative means of communication and physicians should seek to solicit patients' preferences. As a final step, physicians should seek to assess that patients have understood the implications of e-mail, and that they are voluntarily consenting to using such a form of communication.

CONCLUSION

The evolution of patient-physician communication has shown that new technologies can have a significant impact on the way in which patients and physicians interact. Recently, there have been many debates as to the integration of e-mail in the patient-physician relationship. Some have argued that autonomous patients should be permitted to make informed decisions as to the modality through which they prefer to receive care. Others have countered that physicians' professional responsibility to dispense medical care in a manner that maximizes the chances of healthy outcomes prevents the use of electronic communication.

However, many patients and physicians who use the e-mail have reported positive experiences. Therefore, it appears that, with careful attention to ethical standards, e-mail can become an important means of communication between patients and physicians.

RECOMMENDATIONS

The Council recommends that the following be adopted and the remainder of the report be filed:

Electronic mail (e-mail) can be a useful tool in the practice of medicine and can facilitate communication within a patient-physician relationship. When communicating with patients via e-mail, physicians should take the same precautions used when sending faxes to patients. These precautions are presented in the following considerations:

1. E-mail correspondence should not be used to establish a patient-physician relationship. Rather, e-mail should supplement other, more personal, encounters.

2. When using e-mail communication, physicians hold the same ethical responsibilities to their patients as they do during other encounters. Whenever communicating medical information, physicians must present the information in a manner that meets professional standards. To this end, specialty societies should provide specific guidance as the appropriateness of offering specialty care or advice through e-mail communication.

3. Physicians should engage in e-mail communication with proper notification of e-mail's inherent limitations. Such notice should include information regarding potential breaches of privacy and confidentiality, difficulties in validating the identity of the parties, and delays in responses. Patients should have the opportunity to accept these limitations prior to the communication of privileged information. Disclaimers alone cannot absolve physicians of the ethical responsibility to protect patients' interests.

4. Proper notification of e-mail's inherent limitations can be communicated during a prior patient encounter or in the initial e-mail communication with a patient. This is similar to checking with a patient about the privacy or security of a particular fax machine prior to faxing sensitive medical information. If a patient initiates e-mail communication, the physician's initial response should include information regarding the limitations of e-mail and ask for the patient's consent to continue the e-mail conversation. Medical advice or information specific to the patient's condition should not be transmitted prior to obtaining the patient's authorization.

(New HOD Policy)

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