

### Practical Considerations

Email, in some cases, may be the preferred option to communicate with patients or others efficiently and expeditiously. Before using email, it is important for nurses to be aware of the risks and alternative ways to transmit information. In addition to the privacy and confidentiality considerations set out in the *infoLAW*, Legal Risks of Email – Part I, nurses may wish to consider the following practical issues relating to email use with patients and others in their practice.

#### ***Managing Expectations***

Some nurses are using email to communicate directly with patients, both during and after hours. In addition to managing the privacy and security concerns associated with these communications, nurses should consider how to best manage patient expectations about the appropriate uses of these communications, how quickly they will respond to enquiries and what steps should be taken if a timely response is not forthcoming. Reasonable limits and response times may then be clearly communicated to patients.

Further, even when a patient has consented to email communication, a nurse may insist on an alternate mode of communication in certain circumstances. For example, if there is uncertainty as to the identity of the recipient, where the patient should be given an opportunity to ask questions, if it is necessary to ascertain whether the patient properly understood the information or if the information is simply too sensitive to be communicated by email, the nurse may consider a more traditional method of information exchange.

#### ***Documentation***

Nurses are cautioned to maintain copies of all email messages to and from patients. These copies should be kept in the patient's electronic or paper chart. This acknowledges that such communications are professional and that they have potential clinical and legal implications.

#### ***Personal Use of Email at Work***

Nurses using email at work for personal purposes should be aware of potential disciplinary consequences. In some cases, using an employer's email system for personal communication or including inappropriate language and jokes has resulted in disciplinary action by employers and even termination of employment. One example involved an employee whose employment was terminated after 26 years of service for accessing inappropriate material that had been emailed to him at work by others. He forwarded such emails to some of the company's employees, suppliers and contractors. The court concluded that the company's code of conduct allowed employees to use its computers for "limited" personal use but expressly prohibited sending pornographic, obscene, inappropriate, or other objectionable communications. The employee was found to have read, understood and accepted the terms of the code of conduct.<sup>1</sup>

**Communicating  
by email:**

**Are your  
patients  
aware of the  
potential risks?**



**More than  
liability  
protection**

## ***Use in Legal Proceedings***

Generally speaking, most documents (including electronic documents like emails) are producible in legal proceedings if their content is relevant to matters in the proceeding. As such, emails with patients or other health care practitioners that contain clinical information or other information about a patient may need to be disclosed in the event of a patient request for access to personal health information, civil action or complaint to a regulatory body or investigation by another statutory body.

It is important to recognize that email has traditionally been seen, and used, as a manner of sending *informal* communications and less care may be taken drafting an email than would be taken if sending a letter or writing in a patient chart. Language used in emails tends to be less factual, less precise and less professional. For these reasons, caution should be exercised when communicating via email and nurses are reminded to use a professional tone and clear content for all email communications.

Nurses should also be aware that any email communications should be considered permanent. Although email programs have a delete function, IT professionals can retrieve deleted emails with relative ease, even years later. Multiple copies may continue to reside in back-up files, the recipients' email, or in the email of third parties to whom the email was forwarded.

## ***Risk Management Considerations***

To limit the potential legal risks related to email communications, consider implementing the following risk management strategies:

- Let patients and other health care providers know when the use of email is appropriate, the turnaround time for received messages and what to do in the event that symptoms worsen or there is a delay in responding;
- Place emails of a clinical nature in the patient's chart;
- Be aware that when using an employer's email system, the employer has the ability to access the email communications;
- Use a professional tone, and generally take as much care as when using any other formal mode of communication or documentation; and
- Follow employer guidelines and policies regarding email communications.

Please contact CNPS at **1-844-4MY-CNPS** if you have any questions regarding legal risks in email and visit our website at **[www.cnps.ca](http://www.cnps.ca)**.

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1. *Poliquin v Devon Canada Corporation*, 2009 ABCA 216 (CanLII).

**Related infoLAWs of interest:** Mobile Devices in the Workplace and Legal Risks of Email—Part 1.  
Available at **[www.cnps.ca](http://www.cnps.ca)**

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