

Caution:

Non-Patients Are Accessing Your Website for Medical Advice

*Our member physicians often ask:
What are the risks when I give medical
advice to the public through my website?
Can I just act as a consultant?*

This article will address only the issues related to non-patient Internet communication. The general discussion about whether a physician should e-mail his or her patients, although equally important, will be the subject of a future article.

Because the Internet is public, your website can reach the world and the world can reach back. As a general rule, the existence of a physician-patient relationship is the predicate for medical professional liability in California. The establishment of a physician-patient relationship typically occurs when the patient is seen in your office. However, this relationship may be inferred when a physician gives advice over the Internet. The relationship inference is strengthened if the physician charges a fee for online advice, collects individual demographic information, or takes a medical history.

When giving medical advice through the Internet to non-patients, the physician does not know in which state the person resides. The Mutual Protection Trust Agreement specifically excludes claims defense and claims payment for services “arising out of any act, error or omission outside the State of California....” So if you advise an out-of-state patient, and the patient is injured

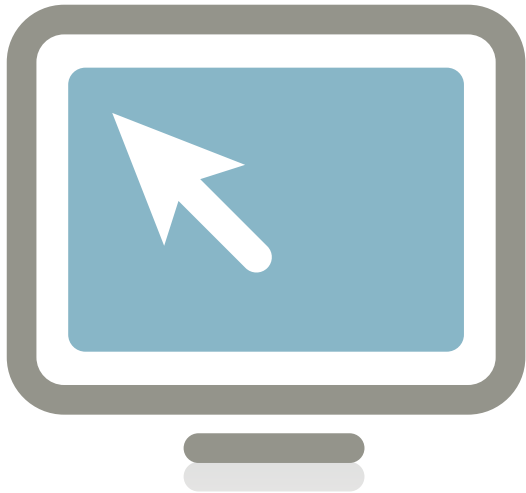


because of your advice, you risk the potential for a lawsuit being brought in the state in which the person resides. This could result in questions of coverage related to your professional liability coverage.

Risk Management Advice

When it comes to general risk management advice:

- Establish or carefully review your website communication policy.
- Limit online communication to patients you have seen in your practice.
- Provide only general information on your website.



Website

If your website offers only general information and advice, consider posting a disclaimer to discourage Internet users from believing they have entered into a physician-patient relationship. A possible disclaimer could include:

“The transmission of information from Dr. Smith’s website (web address) to you is not intended to create, nor does it create, a physician-patient relationship between you and Dr. Smith.”

Advice Through the Internet

If you offer advice through the Internet, consider these risk prevention recommendations:

- Never give specific treatment advice to a patient you have never met, seen or examined. Be clear that you will address only hypothetical situations, with limited information;
- Keep your advice brief and simple. For complex issues which require consideration of multiple problems or a detailed patient history, a formal office visit should be considered; and
- Limit repeat advice.
- Recommend a formal office visit.

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