

Patient Abandonment and Social Media Resolving Ethical Dilemmas

*West Virginia Speech-Language Hearing
Association Annual Convention*
March 8, 2018



1

PRESENTED BY



Gregg B. Thornton, Esq.
Executive Director
Ohio Speech and Hearing Professionals Board
www.shp.ohio.gov

2

VERY SPECIAL ACKNOWLEDGMENT

West Virginia Board of Examiners for Speech-Language Pathology and Audiology

- ▶ Erin Leigh-Ann Browning, M.A./CCC-SLP
Speech-Language Pathologist
President
- ▶ Vickie Pullins, M.A./CCC-SLP
Speech-Language Pathologist
Secretary
- ▶ Dr. Michael J. Zagarella, Au.D., CCC-A
Audiologist
- ▶ Dr. Vernon N. Mullins, Au.D., CCC-A
Audiologist
- ▶ Joe E. Richards, M.A.
Citizen Member

▶ Patty Nesbitt, Executive Director



Source: <http://www.wvspeechandaudiology.com/> March 1, 2018

**National Council of State Boards of Examiners for Speech-Language
Pathology and Audiology**

3

Learner Outcomes

- ▶ Name/describe patient/client abandonment and ethical issues that practitioners encounter in the area of patient/client abandonment.
- ▶ Name/describe social media and ethical issues that practitioners encounter when using social media with patients/clients.
- ▶ State ethical requirements adopted by the American Speech-Language Hearing Association (ASHA), related to patient abandonment and social media.



4

Learner Outcomes

- ▶ Understand how to recognize and appropriately respond to an ethical dilemma.
- ▶ Understand how to implement and follow an ethical decision-making process to effectively resolve an ethical dilemma.
- ▶ List other resources/strategies for following best practices to resolve ethical concerns.



5

Additional Considerations

- ▶ The reference to any West Virginia laws and rules governing the practice of speech-language pathology and audiology is for educational purposes only and is not intended for the purpose of providing legal advice.
- ▶ For legal advice, please consult an attorney licensed in your state.
- ▶ Contact your state licensure board with any questions regarding your Practice Act.



6

Ethics – What’s Our Perspective? Rules, Morals, Behavior, and Principles

- ▶ Revealed in what you do, how you do it, and with what intention
- ▶ Process for looking at and acting on situations that pose ethical dilemmas
- ▶ Similarities and differences between licensure board's Code of Ethics, ASHA, employer – Which one applies and when?
- ▶ Your Code of Ethics keeps the professions strong by ensuring practitioners hold tantamount the health and welfare of persons professionally served
- ▶ Ethical considerations will be illustrated and applied to real situations

7

What is an Ethical Dilemma?

Things to consider:

- ▶ How do I know if I have an ethical dilemma?
 - Situation where there is no right or wrong answer



- Best Practice – Avoid the gray area

8

Ethics – Choose Carefully!



Ethical dilemmas involve:

- So many choices
 - Federal and State Regulations, e.g., HIPPA, IDEA
 - Licensure Board Laws, Rules, Code of Ethics
 - ASHA/AAA Code of Ethics
 - State Association Code of Ethics
 - Employer Policies and Codes of Professional Conduct in the Workplace



9

Ethics – Choose Carefully!



A practitioner's choice will influence and determine:

- Outcomes
 - Person(s) served professionally
 - Family or Caregivers
 - Employer/Co-Workers
- Final Consequences
 - Patient/Client care
 - Practitioner's License/Certification

10

Effectively Resolving Ethical Dilemmas

Introduction – Ethical Decision-Making Process



- What is an ethical decision-making process?
 - A carefully considered approach to help the practitioner identify and resolve ethical dilemmas or situations
- Why should a practitioner use it?
 - To ensure the health & welfare of persons professionally served
- When should it be used?
 - Whenever the practitioner encounters an ethical dilemma or situation
- How should it be used?
 - Today, we'll review a five step ethical decision-making process

11

Ethical Decision-Making Process

Things to consider:

- › Resolving an ethical dilemma requires a stable decision-making process and can help with gray areas:

1. Define the problem and collect the relevant facts

Step 1 – Things to consider:

- › Gather information and be thorough
- › Ask questions
- › Take the time you need before acting

• Adapted from Morris & Chabon, Rockhurst University, 2005

12

Ethical Decision-Making Process

Things to consider:

- ▶ Resolving an ethical dilemma requires a stable decision-making process and can help with gray areas:

2. Identify rules, policies, best-practices to determine feasible options

Step 2 – Things to consider:

- ▶ Check laws, rules, and work policies.
- ▶ Check other resources for best practice – ASHA

Adapted from Morris & Chabon, Rockhurst University, 2005

13

Ethical Decision-Making Process

Things to consider:

- ▶ Resolving an ethical dilemma requires a stable decision-making process and can help with gray areas:

3. Assess the effect of each option on all individuals involved

Step 3 – Things to consider:

- ▶ Consider impact on student, others in your work setting, and yourself

Adapted from Morris & Chabon, Rockhurst University, 2005

14

Ethical Decision-Making Process

Things to consider:

- ▶ Resolving an ethical dilemma requires a stable decision-making process and can help with gray areas:

4. Review all information within your chain-of-command to determine the most appropriate action

Step 4 – Things to consider:

- ▶ Your supervisor is there to support you.
- ▶ Make your supervisor aware of issues as soon as possible.

Adapted from Morris & Chabon, Rockhurst University, 2005

15

Ethical Decision-Making Process

Things to consider:

- ▶ Resolving an ethical dilemma requires a stable decision-making process and can help with gray areas:

5. Select the best option and keep documentation

Step 5 – Things to consider:

- ▶ Your decision should support the best interest of your student.
- ▶ Keep all documentation of your actions.

Adapted from Morris & Chabon, Rockhurst University, 2005

16

Ethical Dilemma – What’s at Stake?

Things to consider:

- ▶ What are the implications when I’m facing an ethical dilemma?
 - Impact to your patient/client
 - Your license/certification
 - Your employment
 - Your reputation, integrity, and professional conduct

17

1. Resolving Ethical Dilemmas in Patient/Client Abandonment



2. Resolving Ethical Dilemmas in Social Media



18

Issues in Patient Abandonment
What are the possible consequences?

Patient Abandonment can have consequences for:

- **Patients/Clients**
 - Without proper dismissal – patient harm may result
- **Licensees**
 - Without proper dismissal – licensees may be at risk for legal liability, disciplinary action, and impact to reputation

19

Patient Abandonment Impact

Patient Abandonment – How it can impact the patient/client:

- **Continuity of care**
 - loss of records
 - repeating services
- **Requires multiple office visits**
- **Time, travel, and cost**
- **Loss of trust between the provider and patient**
- **Loss of trust between professionals**

20

Patient Abandonment Defined

Patient Abandonment – it can be a violation of:

- Statutes;
- Administrative Rules; or
- Code of Ethics

21

Patient Abandonment Defined

- **General definition:** Patient Abandonment refers to withdrawal from treatment of a patient without giving **reasonable notice** or **providing a competent replacement**.

22

Patient Abandonment Defined – Statutes

- Legal definition for patient abandonment will vary by state
- **Legal definition:** an example for patient abandonment:
 - can be defined as the **unilateral termination** of a physician–patient or health professional–patient relationship by the health care provider **without proper notice** to the patient when there is still the necessity of continuing medical attention.

23

Patient Abandonment Defined – Code of Ethics

Legal basis and definitions of patient abandonment found under Codes of Ethics:

- State Licensure Boards
- National and State Associations

24

Patient Abandonment Defined – Code of Ethics

▶ ASHA

- When clinicians **leave** a caseload **without coverage** by an appropriately qualified professional, it is called **client abandonment**. A professional who **abandons** her or his **clients without making effective efforts** to provide for their **continuing care** violates the first principle of the ASHA Code of Ethics: "Individuals shall honor their responsibility to hold paramount the welfare of persons they serve professionally...."

◦ American Speech–Language–Hearing Association. (Updated 2017). *Client abandonment* [Issues in Ethics]. Available at: <https://www.asha.org/Practice/ethics/Client-Abandonment/>.

25

Patient Abandonment Defined – Code of Ethics

ASHA Code of Ethics – Principles of Ethics 1 – Individuals shall honor their responsibility to **hold paramount the welfare of persons they serve** professionally or who are participants in **research** and **scholarly activities**, and they shall **treat animals** involved in research in a **humane** manner.

- ▶ **Rule T** – Individuals shall provide **reasonable notice and information about alternatives for obtaining care** in the event that they can no longer provide professional services.

26

Patient Abandonment Defined – Code of Ethics

West Virginia Licensure Board Code of Ethics – 29CSRS TITLE 29 LEGISLATIVE RULE

2.4. Principle of Ethics I
(3) Licensees shall exhibit professional behavior in the delivery of services by:

2.4.b.2. Individuals shall use every resource, including referral when appropriate, to ensure that high-quality service is provided.

27

Patient Abandonment Defined – Code of Ethics
Ohio Code of Ethics – OH Adm. Code 4753–9–01(B)(3)(k)

(B) Fundamental rules considered essential. Violation of the code of ethics shall be considered unprofessional conduct.

(3) Licensees shall exhibit professional behavior in the delivery of services by:

(k) Use every resource available, including **referrals to other specialists as needed**, to effect maximum improvement in person(s) served. Licensees shall:

(i) **Identify** competent, dependable referral sources for person(s) served professionally.

28

Patient Abandonment Defined – Code of Ethics

Other States

- Some states do not address patient/client dismissal or patient referrals
- At least 15 states have ethical provisions for patient/client referrals
- At least 5 states have patient/client referral verbiage and require licensees to identify referral sources

29

Patient Abandonment Defined – Code of Ethics

Other States – Kentucky

Unprofessional conduct to:

- Abandon or neglect a patient in treatment without making reasonable arrangements for the continuation of treatment

30

Patient Abandonment Defined – Code of Ethics

Other States – Louisiana

- Individuals **shall not discontinue service** to those they are serving without providing **reasonable notice** and **other resources**.

31

Patient Abandonment Defined – Code of Ethics

Other States – Nevada

- A licensee who anticipates the **termination or interruption** of service to a client shall notify the client as promptly as possible and seek the transfer, referral or continuation of service in relation to the needs and preferences of the client.

32

Patient Abandonment Defined – Code of Ethics

Other States – New York

- Unprofessional Conduct for:
- **Abandoning** or neglecting a patient or client under and in need of **immediate professional care**, without making reasonable arrangements for the continuation of such care, or **abandoning a professional employment** by a group practice, hospital, clinic or other health care facility, without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients or clients.

33

Patient Abandonment Defined – Other Regs
Examples of Other State Provisions

- Committing any act of gross misconduct, dishonorable, immoral, or unprofessional conduct while engaging in the practice of speech–language pathology or audiology.
- Engaging in illegal, incompetent or habitually negligent practice.
- Engages in a pattern of incompetent or negligent conduct.
- Professional negligence or malpractice.

34

Patient Abandonment Defined – Code of Ethics

Caveat – Can this requirement lead to possible allegations of patient abandonment?

Unprofessional conduct to:

- **Terminate a professional relationship** when it is reasonably clear that the **client is not benefiting from the services being provided.**
- The licensee shall periodically evaluate and document the patient's progress towards the treatment goals and recommend referral to other disciplines or **recommend discontinuance of therapy where there has been no documented progress.**

35

Patient Abandonment Defined – Code of Ethics

Caveat – Can this requirement lead to possible allegations of patient abandonment?

Things to consider:

- Document your decision and professional judgment to discontinue the professional relationship with the patient, e.g., no patient progress, misconduct, etc.
- Identify a referral source for the patient/client

36

Interactive Survey



- ▶ Press the number corresponding to the reply you want to choose
- ▶ The number you press last is the number that will be recorded

37

Patient Abandonment Scenarios

1. Disagreement over plan of care
2. Inappropriate comments by client
3. Employer closing
4. Patient inconvenienced
5. Employer strike
6. Parents disagree over decision to end services



38

Patient Abandonment – Valid Reasons to end practitioner/client relationship

Some valid reasons to end a provider–patient relationship:

- The practitioner has insufficient skills to provide adequate treatment to the patient;
- There are insufficient supplies or resources to provide adequate treatment;
- An ethical conflict of interest arises during the course of treatment;
- The patient/client violates the practitioner's or facility's policies, e.g., missed appointments, non-payment, etc.;
- The patient/client refuses to comply with the practitioner's recommendations, and
- The patient/client demonstrates inappropriate behavior, such as making sexual advances or engaging in verbal abuse.

39

Patient Abandonment – Steps to end practitioner/client relationship

Steps to appropriately terminate the relationship under valid reasons:

- Provide the patient with written notice of the termination
- Provide a valid reason(s) for the decision
- When appropriate, the practitioner should continue to treat the patient for a reasonable period of time to allow the patient to arrange for alternative care from another practitioner;
- The practitioner should identify a referral source;
- The practitioner should arrange for patient authorization to transfer a copy of patient records to the new practitioner

40

Patient Abandonment – Other Considerations

Patient abandonment is legally defined and is determined on the facts of each situation. A “reasonable person” or “due diligence” standard can be used, but check within your jurisdiction to verify if you have concerns:

- Authorized strikes by collective bargaining members
- Employer lays off personnel
- Employer closes a facility and does not reassign staff

41

Patient Abandonment – Other Considerations

Just because it may not be patient abandonment, doesn't mean the practitioner's conduct is immune from other possible violations.

- Committing any act of gross misconduct, dishonorable, immoral, or unprofessional conduct while engaging in the practice of speech-language pathology or audiology.
- Engaging in illegal, incompetent or habitually negligent practice.
- Behavior that adversely reflects on the profession

42

Resolving Ethical Dilemmas in Social Media



43

Guiding Principles – Social Media

- ▶ Why are we using social media?
 - It can be an effective tool and resource for private business, non-profit organizations, governmental agencies, schools, religious groups, etc:
 - Connect
 - Recruit
 - Teach
 - Inform
 - Promote
 - Solicit
 - Interact
 - Community



44

Guiding Principles – Social Media

- ▶ Why are practitioners using social media?



- Positive impact on patients and clients
 - Patient/Client, family or caregivers aware that they are not alone
 - Awareness that treatment options are available
- Immediate accessibility to patients/clients, family, or caregivers who might otherwise be without professional care, support, or resources

45

Guiding Principles – Social Media

- ▶ What are the risks with using social media?
 - Unethical or unprofessional conduct
 - Unauthorized disclosure of patient's health information
 - Failure to maintain professional boundaries with patients/clients
 - Violation of employer workplace policies
 - Breach of social media etiquette, e.g., rants vs. raves
 - Impersonations and identity theft
 - Potential illegal behavior or illegal content
 - Potential loss or control over content

46

Guiding Principles – Social Media

- ▶ Social media rants in the news! #@\$%?!
 - Do you 'rant' or 'rave' on Facebook?
 - Teachers tripped up by Facebook rants and bikini pics
 - Rant: Being a "Professional" on LinkedIn vs. your "fun" life on Facebook
 - Grad Student Says School Censored His Facebook Rant
 - City worker fired over Facebook rant
 - Second Circuit Court of Appeals upholds NLRB's finding that an employee's vulgar Facebook rant toward his supervisor was protected under the NLRA

47

Guiding Principles – Social Media

- ▶ ASHA Principle of Ethics I
Individuals shall honor their responsibility to hold paramount the welfare of persons they serve professionally or who are participants in research and scholarly activities, and they shall treat animals involved in research in a humane manner.
- ▶ Rule P - Individuals shall protect the confidentiality of any professional or personal information about persons served professionally or participants involved in research and scholarly activities and may disclose confidential information only when doing so is necessary to protect the welfare of the person or of the community, is legally authorized, or is otherwise required by law.

48

Guiding Principles – Social Media

- ▶ ASHA Principle of Ethics III
Individuals shall honor their responsibility to the public when advocating for the unmet communication and swallowing needs of the public and shall provide accurate information involving any aspect of the professions.
- ▶ Rule B – Individuals shall avoid engaging in conflicts of interest whereby personal, financial, or other considerations have the potential to influence or compromise professional judgment and objectivity.

49

Guiding Principles – Social Media

- ▶ **West Virginia Licensure Board Code of Ethics – 29CSR5**
- ▶ **TITLE 29 LEGISLATIVE RULE**
- ▶ 2.4. Principle of Ethics I
- ▶ 2.4.b.9. Individuals shall not reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community.

50

Social Media: Ethics and Etiquette Scenarios

1. Promoting services
2. Unauthorized consent
3. Accepting “Friend Invitations” from clients
4. Marketing for new patients/clients
5. School’s social media usage
6. Misrepresentation
7. Inappropriate boundaries
8. Video testimonials
9. Milestone moments



51

Guiding Principles – Social Media

- ▶ Practitioners must not transmit or place online individually identifiable patient information (HIPAA)
- ▶ Practitioners should understand that patients, colleagues, institutions and employers may view postings
- ▶ **Check with employer regarding internal social media policies or professional conduct regarding interactions/communications with patients**
- ▶ Practitioners must observe ethically prescribed professional boundaries with patients

62

Guiding Principles – Social Media

- ▶ Provide full disclosure to patient/client/parents about your usage of social media, policies regarding postings, e.g., comments, testimonials, use of photos, etc., and obtain their consent or acknowledgement
- ▶ Practitioners should take advantage of privacy settings and seek to separate personal and professional information online
- ▶ Practitioners should bring content that could harm a patient's privacy, rights, or welfare to the attention of appropriate authorities
- ▶ Practitioners should participate in developing institutional policies governing social media/online conduct.

63

Guiding Principles – Social Media

- ▶ Use of social media in a work setting is not prohibited, per se; however, if social media is used, clear policies should be in place to maintain professional boundaries and protect the patient/client's rights.
- ▶ Personal freedom of speech, professional responsibilities, and employer expectations all intersect.



64

DUTY TO REPORT



- Is it really a requirement?
- What must I report, when, and to whom?
- How do I report?
- Why is it important?
- What are the consequences if I fail to report?

55

DUTY TO REPORT



- › Licensees have a duty to report alleged violations to the board
- › Ethics rule: 2.7.b.7:

2.7.b.7 Individuals who have reason to believe that the Code of Ethics has been violated shall inform the West Virginia Board of Examiners.

- › Direct, first-hand knowledge;
- › Reasonable cause to believe that a violation occurred;
- › Contact your licensure board

56

Why use the Code of Ethics

- › Ensures that the health and welfare of your clients/patients are being protected and served



57

Why use the Code of Ethics

- ▶ Using the Code of Ethics will protect your license and help educate others about your professional conduct



58

Summary

- ▶ Review & understand the Code of Ethics
Empowers you to resolve dilemmas
- ▶ Act in a manner that maintains the dignity of persons served and protects their health and welfare
 - We serve patients, students, supervisees, families, co-workers

59

Summary

- ▶ Employ a process for decision making
 - Process will influence outcome
 - Follow a stable process to make decisions more consistent and equitable
 - Ethical decision-making process can help with gray areas

1. Define the problem and collect the relevant facts

2. Identify rules, policies, best-practices to determine feasible options

3. Assess the effect of each option on all individuals involved

4. Review all information within your chain-of-command to determine the most appropriate action

5. Select the best option and keep documentation

• Adapted from Morris & Chabon, Rockhurst University, 2005

60

Summary

- ▶ Educate your employer & your consumers about our Code of Ethics
 - Encourages strong boundaries that will be respected by others

61

Summary

- ▶ Use the many resources available and consult with others:
 - The more facts and points of view considered, the more likely you are to make a wise decision
- ▶ Links to other resources:
ASHA Resources: <http://www.asha.org/practice/ethics/>

62

ASHA Ethics Flow Chart



TABLE: PRACTICAL TIPS FOR PROTECTING PATIENT INFORMATION

Electronic data

• Make sure that every staff member has a unique password to log into the computer or electronic record system. It should be at least eight characters long and contain both uppercase and lowercase letters, at least one number, and at least one symbol (like @ or #). It should not use an easily guessable password choice like the person's birthday.

• Do not store computer passwords where they can easily be found.

• Establish a standard policy that all staff members are to log off their computers when leaving for more than a few minutes.

• Put privacy screens on all computers.

• Set up desks so that computer screens face away from public areas.

• To secure health information on mobile devices such as laptops and smartphones, install encryption software, don't use public Wi-Fi when accessing patient information, and install software that can remotely disable or wipe the system if the device is lost or stolen.

• Be very cautious about e-mailing any patient information, either in communicating with patients themselves or when consulting other hearing healthcare professionals or specialists. Do so only over a secure, encrypted connection (again, no Wi-Fi).

• Always double-check e-mail headers before sending. Disable the auto-fill option that many e-mail programs have, which automatically guesses the recipient e-mail address

from the first couple characters typed and the addresses used previously. E-mails frequently go to the wrong recipient that way.

• Do not discuss your work in any way that could reveal protected health information on Facebook, Twitter, or other social media sites.

Written records

• File all patient records, imaging, and tests in locked cabinets.

• Shred all confidential paperwork before discarding.

• Don't leave patient files sitting on top of a desk.

• Don't post the day's appointment schedule where it can easily be viewed by non-staff members.

• Double-check fax numbers before sending any patient records, and always use a cover sheet with a privacy disclaimer.

• Check the fax machine regularly. Do not let papers that have come in by fax sit around where they might be seen by unauthorized individuals.

Oral communication

• Make sure that clinical conferences, whether with other providers or with patients, are held in private spaces where a door can be closed rather than in the waiting room or hallway.

• Don't discuss cases or mention patient information in places where others can overhear, like in the elevator or cafeteria.

Source: The Hearing Journal - March 2013 - Volume 66 - Issue 3 > Cover Story: HIPAA Compliance Holds Keys to Keeping Patient Data Safe, pp. 28-46.

64

Questions?



Please return your
clicker



Summary

- ▶ Employ a process for decision making
 - Process will influence outcome
 - Follow a stable process to make decisions more consistent and equitable
 - Ethical decision-making process can help with gray areas

1. Define the problem and collect the relevant facts

2. Identify rules, policies, best-practices to determine feasible options

3. Assess the effect of each option on all individuals involved

4. Review all information within your chain-of-command to determine the most appropriate action

5. Select the best option and keep documentation

- ▶ Adapted from Morris & Chabon, Rockhurst University, 2005

ASHA Ethics Flow Chart

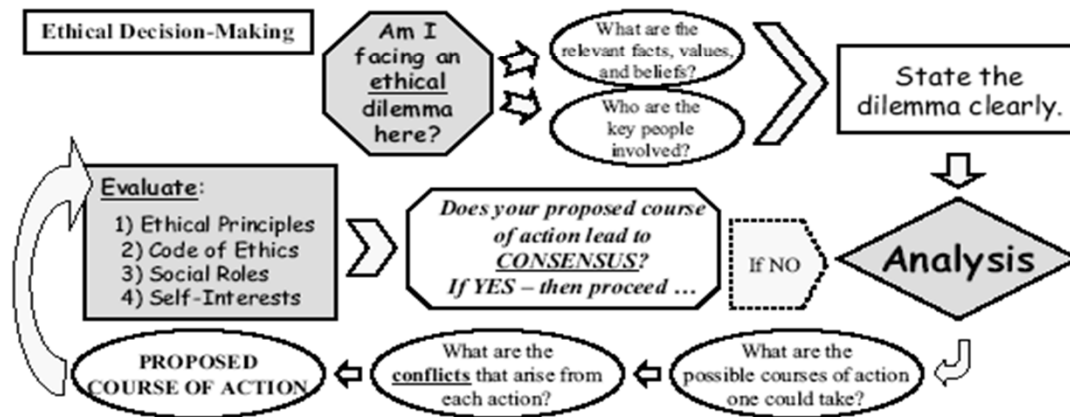


TABLE: PRACTICAL TIPS FOR PROTECTING PATIENT INFORMATION

Electronic data:

- Make sure that every staff member has a unique password to log into the computer or electronic record system. It should be at least eight characters long and contain both uppercase and lowercase letters, at least one number, and at least one symbol (like @ or #). It should not use an easily guessable password choice like the person's birthday.

- Do not store computer passwords where they can easily be found.

- Establish a standard policy that all staff members are to log off their computers when leaving for more than a few minutes.

- Put privacy screens on all computers.

- Set up desks so that computer screens face away from public areas.

- To secure health information on mobile devices such as laptops and smartphones, install encryption software, don't use public Wi-Fi when accessing patient information, and install software that can remotely disable or wipe the system if the device is lost or stolen.

- Be very cautious about e-mailing any patient information, either in communicating with patients themselves or when consulting other hearing healthcare professionals or specialists. Do so only over a secure, encrypted connection (again, no Wi-Fi).

- Always double-check e-mail headers before sending. Disable the auto-fill option that many e-mail programs have, which automatically guesses the recipient e-mail address

from the first couple characters typed and the addresses used previously. E-mails frequently go to the wrong recipient that way.

- Do not discuss your work in any way that could reveal protected health information on Facebook, Twitter, or other social media sites.

Written records:

- File all patient records, imaging, and tests in locked cabinets.

- Shred all confidential paperwork before discarding.

- Don't leave patient files sitting on top of a desk.

- Don't post the day's appointment schedule where it can easily be viewed by non-staff members.

- Double-check fax numbers before sending any patient records, and always use a cover sheet with a privacy disclaimer.

- Check the fax machine regularly. Do not let papers that have come in by fax sit around where they might be seen by unauthorized individuals.

Oral communication:

- Make sure that clinical conferences, whether with other providers or with patients, are held in private spaces where a door can be closed rather than in the waiting room or hallway.

- Don't discuss cases or mention patient information in places where others can overhear, like in the elevator or cafeteria.

Source: The Hearing Journal – March 2013 – Volume 66 – Issue 3 > Cover Story: HIPAA Compliance Holds Keys to Keeping Patient Data Safe, pp. 28–46.