



Thomas M. Evans
Partner

TME@Rendigs.com
513 381 9289



C. Jessica Pratt
Associate

CJP@Rendigs.com
513 381 9216

Secretly Recorded Patient Conversations – How Doctors Can Protect Themselves

More than ever, patients are requesting to record conversations with their health care providers. The majority of these requests are disclosed to the provider, well intentioned and come from patients who want to better understand the nuances of their health care situation or when they want to share an accurate description of their medical condition with family members, friends or significant others.

Unfortunately, there has also been an alarming number of medical malpractice cases filed where patients have secretly recorded their doctors and nurses and have effectively elicited detrimental comments made in the spirit of disclosure and with the sense, from the physician's perspective, that the conversations were private. In those instances the audio is often recorded from a hidden cell phone and on some occasions the patients disclosed in deposition that their attorneys sent them into the provider meetings with instructions to record them without the physicians' consent. There are also reported instances where patients have taken their cell phones into a procedure room and left the recording function on during the procedure capturing all of the comments made by the treatment team. In one case some disparaging statements about the patient were recorded and a subsequent disciplinary process against the physician ensued.

It is perfectly legal, in many states, including Kentucky, for one person to record the conversations of another person without their knowledge or consent. Those laws require that only one party to the conversation consent to the recording and that party can be the person actually doing the recording.

Not only is it legal for patients to secretly record their physicians but in most states the recordings may be admissible at trial. Therefore, statements made to the patients about the quality of the care rendered by the physician or other medical providers, or comments made about whether another approach or procedure should have been taken, in retrospect, may be used against the physician in their malpractice trial. Many states have laws in place to protect physicians from the admission into evidence of dislo-



Rendigs, Fry, Kiely & Dennis, LLP
600 Vine Street, Suite 2650
Cincinnati, Ohio 45202

tures to patients of unanticipated outcomes. These are commonly called "apology and disclosure" statutes. Unfortunately, Kentucky is not one of those states.

The purpose of this article is not to overly alarm you or put a damper on your ethical, appropriate and full disclosure of unfortunate patient outcomes. The benefits of full disclosure on the physician-patient relationship is well documented and the possibility that a patient may be secretly recording you should not inhibit frequent and honest conversations with your patients. Rather, the intent here is to make you aware of these potential situations and to provide you with a simple strategy to protect yourself. Our recommendations are:



1. Be aware that any conversation with your patient may be recorded.
2. Express your statements to patients that would be appropriate for anyone to hear.
3. Consider the tone and inflection of your voice.
4. Make sure you have all of the relevant facts before you conclude that your care, or the care provided by others, was not indicated or inappropriate in any way.
5. Review the practices in your facilities about whether patients are or should be permitted to take cell phones into the cath lab or procedure room(s).
6. Seek assistance from your attorney and/or risk manager if you have any questions regarding disclosure of unanticipated patient outcomes.

We live in a digital age. With the proliferation of smart phones, recording devices and camera phones the modern practitioner must be aware that any guarantee of privacy is largely a thing of the past. The way people communicate has changed and the way you relate sensitive medical information to your patients should take these changes into consideration.



Tom Evans practice focuses on the representation of physicians, nurses, hospitals and other healthcare providers in actions involving allegations of professional malpractice. Tom is a trial lawyer who defends healthcare professionals in state and federal Courts located in Ohio, Colorado and Kentucky in cases that involve catastrophic fetal neonatal and adult injuries and wrongful death.
TME@Rendigs.com



Jessica Pratt's practice focuses on the defense of medical malpractice and wrongful death claims in Kentucky and Ohio. She has extensive experience defending hospitals, long term care facilities, physicians, nurses and other health care providers.
CJP@Rendigs.com