So You Like to Communicate Electronically: What's the Risk?

American Society of ASPS Podiatric Surgeons
An affiliate of APMA

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Course Objectives

- Understand the impact of cyber crime on medical practices.
- Understand the HIPAA Privacy and Security Risks of electronic communications with patients.
- Understand the risks associated with using personal electronic devices (PED) in medical practice.
- Understand the risks of social media in today's medical practice.
- Understand the malpractice risks associated with electronic communications with patients.
- Learn strategies to deal with these risks.

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Disclosures

- I am a full-time employee of PICA/ProAssurance.
- I am a stockholder of ProAssurance (PRA).

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The “Medicalization” of PEDs

- The Welch Allyn iExaminer

- Blood glucose monitoring app

- Blood pressure app

- iPharmacy app

- Measuring calories and fitness regimens

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Four out of five practicing physicians use smartphones, computer tablets, various mobile devices or apps in their medical practices.

Source: "80% of Doctors Use Mobile Devices"
Information Week - October 21, 2011

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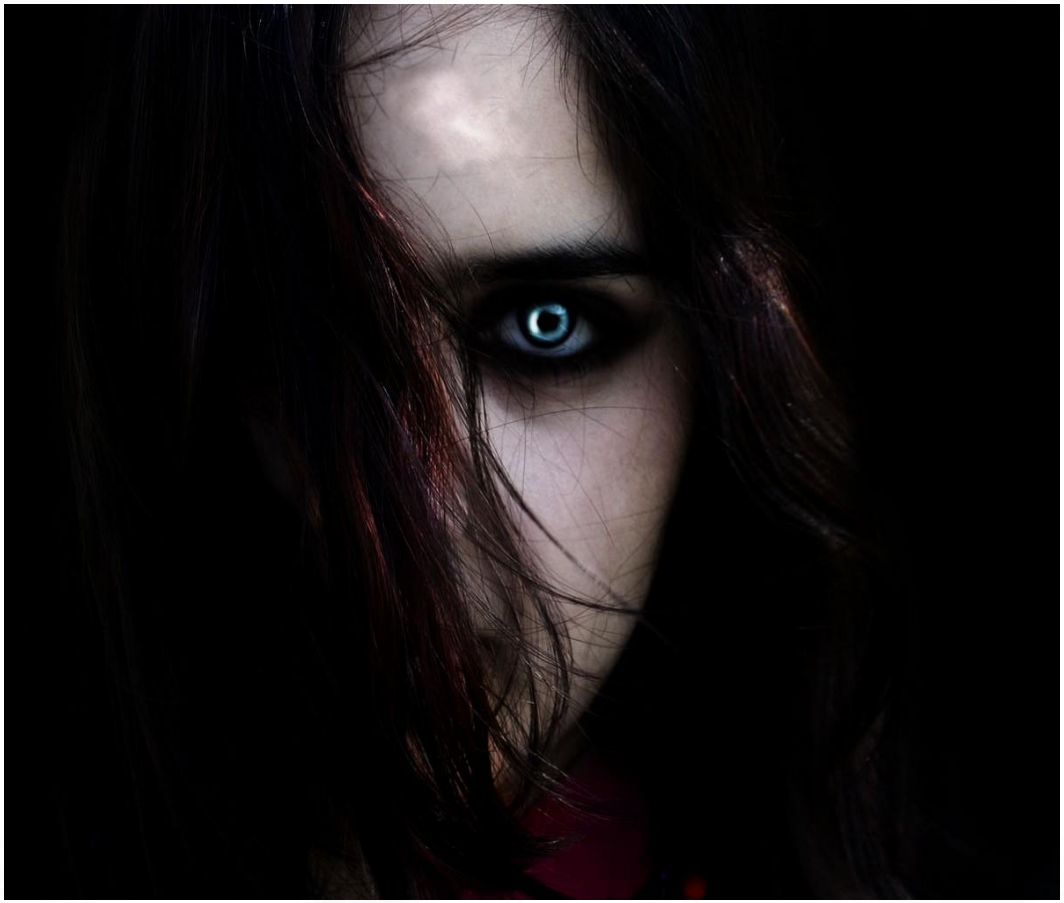
But, beware!



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60% of Small Companies that Suffer a Cyber Attack are Out of Business within 6 Months!

- Denver Post March 24, 2017

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The Facts

- Breaches of ePHI are also skyrocketing.
  - In 2016, 3 billion passwords and credentials stolen
    - 95 per second!
    - 80% of cyber breaches involve healthcare information
  - What's the street value?
  - What does one lost piece of data cost your practice?
  - What is Ransomware?
- Cyber issues are governed by the HIPAA and HiTech statutes

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The HIPAA Privacy Rule

Patient PHI may only be used

- As permitted by HIPAA rules

  OR

- With patient authorization.

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The HIPAA Security Rule

- Passwords and authentication (“access controls”)
- Transmission of ePHI and encryption
- Physical security
- Integrity of ePHI
- Loss of data

Problems Specific to PEDs

- Authentication – no password generally used
- Encryption – typically data is not encrypted
- Wi-Fi connection – often used instead of secure website
- Remote storage in the “cloud” (unknown network servers)

Texting

- Secure texting apps now on the market
  - Tiger Text
  - Doximity

- **MAJOR DRAWBACK**: For “secure” texting, both parties must be using secure platform.

Encryption

- Wickr – a free app that encrypts voice, text and video messages

- Silent Circle, Koolspan and Seecrypt – all offer encryption for cellphone calls and e-mails

HHS Guidelines for HIPAA and PEDs

- HHS mandates that providers must establish specific procedures to govern:
  - Tracking devices containing ePHI
  - Safeguarding devices containing ePHI
  - Encrypting devices containing ePHI
  - Disposing and/or re-using devices that contain ePHI
  - Responding to security incidents
  - Transmission of ePHI

http://www.hhs.gov/ocr/privacy/hipaa/administrative/securityrule/remoteuse.pdf

Malpractice Concerns with PEDs

- Lack of documentation or integration in the patient's file (e.g., texting doctor's orders)
- Managing Patient Expectations
- Poor Communication is the **Primary** Reason why Patients Sue Their Doctors

Malpractice Concerns with PEDs

- Was a physician-patient relationship established?
  - General information vs. specific advice
  - Use disclaimer language
- Is the issue appropriate for a remote (vs. in-person) encounter?

Malpractice Concerns with PEDs

- Communicating electronically with patients may have the following unintended consequences:
  - Casual, non-professional relationship patients
  - Patients expecting immediate responses
  - Patients (or physicians) sending unintended text messages to the wrong recipient
  - Uncertainty of delivery, receipt and review

Verbal vs. Written Communication

“Sure, I’ll do it.”

Social Media Concerns with PEDs

- Physicians sharing stories of patients
  - Via blogs, Facebook, Instagram, Twitter, etc.
- Violations of HIPAA and other privacy laws if one can identify the patient from the description
- Professionals should maintain separate professional and personal online personas.

Real Life Experiences

- The resident blogger
- The texting doctor
- The browsing medical assistant
- The come-through-the-attic thieves
- Cloud-based security breach

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Real Life Experiences

"Hack of Podiatry Office Puts 40,000 Patient Records and PHI at Risk"

Healthcare IT News, June 6, 2016

Estimated as much as $400,000

in reporting costs alone

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NC Real Life Experiences

“Triangle doctor: Allscripts ransomware attack cost his practice dollars, hurt patients, shows danger of electronic records”

WRAL Tech Wire, January 30, 2018

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Take Away Messages

- *"I'm from the government and I'm here to help."*
  – Ronald Reagan
- Understand HIPAA – it is not voluntary.
- *"Please don't text and drive."*
- Don't mix your personal and professional electronic lives.
- Have adequate insurance coverage.

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Electronic Communication and Cyber Issues

Questions?

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